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THE NAYAR REGULATION AMENDMENT BILL.

PRESIDENT: We will now resume the consideration of the Nayar Regulation Amendment Bill. When the House was prorogued on the 12th June, the proposal to substitute the following clause for Clause 22 was under the consideration of the Council:—

"On the death of a non-Nayar male leaving him surviving a Nayar widow or widows, Nayar children and lineal descendants of pre-deceased Nayar children, if any, they, or such of them as are alive, shall be entitled to the self-acquired and separate property left undisposed by the deceased as follows, that is to say :—

(i) If such non-Nayar leaves him surviving also any non-Nayar widow or widows, undivided non-Nayar children and lineal descendants of such pre-deceased children entitled to succeed to his estate under his personal law, the property of such non-Nayar shall be divided among his Nayar and non-Nayar widows, children and lineal descendants of pre-deceased children equally, each of the widows being treated as equal to a child and the lineal descendants of each of the pre-deceased children taking the share which such child would have taken had it been alive.

The share so ascertained shall be given to his Nayar widow, children and lineal descendants of pre-deceased children, if any.

(ii) If such non-Nayar has no such non-Nayar heirs but leaves him surviving his mother or members of her thavazhee entitled to succeed to his property under his personal law, the inheritance shall be divided equally among his Nayar heirs as mentioned above and his mother or her thavazhee, as the case may be, the mother, and, in her absence, her thavazhee taking a share equal to that of a child.

(iii) In the absence of the non-Nayar heirs mentioned in sub clauses (i) and (ii), the whole inheritance shall go to the Nayar heirs mentioned in this Section."

The agenda paper is before you and you know the clause which is sought to be substituted. Mr. Subba Aiyar moved an amendment to this amendment which runs as follows :—"After the words 'non-Nayar male' in line 1 of the above amendment, insert the following: 'Contracting a marriage with a Nayar female after the commencement of this Regulation and."

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*) : Sir, as you pointed out, when the Nayar Regulation Amendment Bill was under consideration last time, the discussion centred about Clause 22 as settled by the Select Committee. Mr. P. K. Narayana Pillai brought forward a motion to substitute a new clause in the place of Clause 22 as settled by the Select Committee. Several amendments have been sent up to Clause 22 already. I raised a technical objection then as to whether Mr. P. K. Narayana Pillai was in order in pressing as an amendment what really was a substitution. The understanding towards the close of the discussion was that all the amendments might be suggested to the clause moved by Mr. Narayana Pillai; that clause with all its amendments would be disposed of; and then we should go back to the question whether the clause as moved by him, or as finally amended by the Council, might be substituted in place of Clause 22. I may submit at the outset that there is a lot of inconvenience and handicap in proceeding with the discussion in view of the

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turn taken by the order in which amendments had to be moved. So my friend spoke generally on all the sub-clauses making up his clause. Mr. Subba Aiyar made certain general observations with respect to Mr. Narayana Pillai's motion and made a specific amendment. To begin with, before developing my argument, I may be allowed to make a few observations. I may congratulate my friend Mr. Narayana Pillai and I do it in all sincerity—

PRESIDENT: Are you supporting Mr. Subba Aiyar's amendment?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Yes, Sir. I may congratulate Mr. P. K. Narayana Pillai, and I do it in all sincerity, that perhaps the appeal he put forward on that day was the most passionate and the most eloquent appeal that we had listened to in this Hall ever since we began our deliberations. Of course when I said 'passionate,' I did not want to suggest that his object was to stir up passions or prejudices. Far from it. I only meant to suggest that a lot of warmth was introduced into the speech apparently because he felt that the justice of the cause would justify it. He based his contention on very broad lines. He said that when once the legality of a marriage of a Nayar lady with a non-Nayar was recognised, inheritance must follow as a logical consequence, and that that alone was consistent with what he regarded as equity and natural justice. I demur to the correctness of that as a broad proposition. With much of what he said, I am in agreement. As to the desirability of a husband realising his obligations towards his wife and children, as to the desirability of conferring a statutory right of inheritance on the wife and children of a non-Nayar, as I submitted before, I am in perfect agreement with him. We owe that duty to ourselves. But I may differ from him as to when that right should begin to operate. I may differ from him as to the quantum of inheritance that they should be allowed. In approaching this discussion I feel it necessary to clear the ground of a few possible misconceptions on the subject. When he lays down that natural justice demands the right of inheritance along with the recognition of the legality of the marriage, I say it has not been so in the history of the world here or elsewhere. I say it deliberately. Even before the passing of Regulation I of 1088, according to the pronouncement of the Travancore High Court, the union of a Nayar lady with a non-Nayar in the *sambandham* form was regarded as a legal marriage and there were no rights of inheritance. There is a class of Nambudiris up in North Travancore, who follow the marumakkathayam law of inheritance; their marriage is a sacrament, and the legal rights of succession do not follow. There is a large class of Mahomedans in Bombay, and who have settled in Travancore, called Cutchi Memons, whose marriage is a religious function. Their marriage with Mahomedan females is a religious function, and it is a perfectly valid marriage. But the rights of succession do not follow. They are supposed to proceed along the lines of Hindu Law.

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MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): May I know the number of those Nambudiri families?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I think it is fairly large. It is a respectable percentage. After all, in considering the question it is not the number that counts, but it is the principle. I will come back to my friend's suggestion later on.

There are the Moplahs up in Malabar. They are Mahomedans. Their marriage is in accordance with the Mahomedan law. But the rights of inheritance do not follow. There is a very large class of Nayars and Ezhavas, very much larger than the number of Brahmins. My friend Mr. Nidiry put the question, what is the number of the Nambudiri community who follow the marumakkathayam law under which the wife and children are deprived of their rights of inheritance. It may be a small number. But take the case of the Nayar community itself. It is a large number—lakhs and lakhs. Their marriage was held to be legal by the Travancore High Court, though the legality of the marriage was thrown out by the Madras High Court. So far as the Travancore Courts are concerned, there was no doubt entertained at any time that it was a perfectly legal contract, and that rights of inheritance did not follow until they were conferred for the first time by the Nayar Regulation of 1088. Then comes the further question, was it not revolting to natural justice?

MR. A. HOOGEWERF (*Nominated*): May I ask whether these bad cases justify another bad case?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): The question is whether they are bad cases. I must decline to believe that the members of Malabar Nambudiri families entered into marriage contracts with the consciousness that the institution was bad. It was not bad then. It is bad now. It has become unworkable owing to the conditions of modern civilisation and modern ideas of life and ideals of conduct. It has become unworkable and the necessity has arisen for the Legislature to intervene. Merely because in the Year of Grace 1924 one feels that it is opposed to natural justice and equity and good sense, to condemn an institution which has the practice of centuries behind it is absolutely illogical.

MR. A. HOOGEWERF (*Nominated*): Has not polygamy centuries of practice behind it? Was it not abolished?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): If my friend wishes to have the last word on the subject I will not quarrel with him. I will gladly concede to him the privilege. I am now dealing with actual history, the actual drama of life as it has been played here and elsewhere.

I said, when my friend interrupted me, that it was idle to pretend that considerations of natural justice were absolutely scarificed in Malabar until saviours came in to introduce the Regulation of 1088. I must decline to believe that, Sir. As I said in the course of the discussion of the

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general principles underlying the Bill when it was introduced, marumakkathayam law did contribute to the development of national life and to the progress of a culture and civilisation of its own which can very well challenge comparison with the culture and civilisation in other parts of India. To say that those who were responsible for the inauguration of the marumakkathayam system were traitors to natural justice is belying history. As I submitted, the old idea of life centred round the family. Each one thought of developing institutions in a particular manner. The country as a whole adopted it; not only the natives of Malabar but also others who settled down in Malabar like the Nambudiris, seem to have gone in for the marumakkathayam system. But in the light of modern civilisation each one feels that he owes a duty to his wife and children and that that duty is paramount. It is an absolutely unquestionable proposition. That is the modern ideal; that is the modern belief; and it behoves the Legislature to recognise that demand. That is all the difference between me and my friend Mr. Hoogewerf. While we agree that the wife and children should have our first consideration according to modern conceptions, let us not stigmatise the past as a period when justice was not recognised, when natural justice played us false. Well, what is natural justice? It is an Atlantean phrase. What may appear to be natural justice to some of us may strike others as absolutely unnatural justice. Take the case of the law of primogeniture which obtains in England. I am not at present talking of Royal families anywhere under the sun; I am talking of the great landed gentry in England. The doctrine of natural justice requires that all the children should be treated alike. But the law of primogeniture says that the eldest children alone shall be entitled to succeed. My friend Mr. Hoogewerf may not deny the correctness of the proposition. If there are half-a-dozen children, the eldest alone is allowed the privilege of succeeding to the name and inheritance. The others are treated differently. Is that consistent with natural justice? There is a species of tenure in the county of Kent called the Gavelkind. The youngest son may succeed to the entire inheritance. Is that natural justice? There natural justice is not achieved by the application of the rule of three. Several other factors should enter into our conception before we decide what natural justice is. With reference to the requirements of a particular community in a particular state of evolution recognising the realities of the present, we cannot say—

MR. A. HOOGEWERF (*Nominated*): Is there not a law just now in contemplation to do away with this right of primogeniture?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I have no idea. Sir, probably my friend Mr. Hoogewerf, in the course of his journalistic activities, is able to keep in touch with the latest developments in England. But, so far, I have not come across any instance of an attempt at revolutionising the law of succession in England.

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MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): The law that was passed in 1922 modifies considerably the old tenures of primogeniture and Gavelkind. It has been thoroughly recast.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): For the present, for the sake of argument, we will admit that in 1922 the law of primogeniture was done away with. Well, till 1922 it was prevailing. Was it anybody's contention that it was unnatural? Merely because it was done away with in England in *1922*, we should not be called upon to do away with existing institutions wholesale in *1924*.

MR. J. JOHN NIDIRY (*Changanachery cum Minachil*): Was it not unpopular?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I do not know that. There again it is a matter of temperament. It will be difficult to say whether a particular system is getting unpopular or not. You can take note of one important factor that there is a natural aspiration, and a perfectly legitimate aspiration, that one's wife and children should have the first consideration. That I concede. While conceding that I take very strong exception to any suggestion that till now we had been living in a land of tragedy. That is all the difference between my friend and myself. Marumakkathayam had its advantages. It has had its disadvantages also. The present Bill is an attempt to remedy the disadvantages and bring that community, as far as possible, into line with other communities which are considered to be more progressive than this. I merely put it as that. So, a longing for going to makkathayam from marumakkathayam is a perfectly legitimate aspiration, and it is the duty of the legislature to recognise and give effect to it. I have to say one thing more, viz., that that right of succession ought not to be restricted to Nayar fathers and Nayar husbands alone, and that right ought to be extended to all those who claim relationship with Nayar ladies and Nayar children either as husbands or as fathers. So far, I might say, it is in accord between my friend and myself. Now you propose to effect a change. In effecting a change, my submission is, it ought not to be a violent change. That is all. The time is ripe and it is our solemn duty to effect a change. How far are we to go in that onward march? That is the question. My friend asks us to run for a mile. I say to my friend: "Do not run so far as that; for the present stop when you have reached a certain part of the destination." That is all the difference. The difference is merely as to the extent to which we should travel and as to the place at which we should pause. That is the difference between my friend and myself.

MR. A. HOOGEWERF (*Nominated*): Does it not depend upon the physical fitness also of the runner? (*Laughter.*)

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): If it is a physical race, it is well and good. Here, we are talking of justice. Justice has absolutely no reference to the muscular energy that we may be able to summon to our aid. If it is a question of 'might is right,' my friend has the last word on the subject. If it is a

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question of physical energy that determines the rights and liabilities, I bow to my friend's view as absolutely correct. But, fortunately, we have not gone so low in our conception of life and in our views about society as to resort to physical strength as the ultimate determining factor in social relations though that plays a very important part in determining international rights and obligations. So far as the internal affairs of a nation are concerned, physical strength is not the last word on the subject.

Then the only question is how far it would be safe. That again, Sir, depends upon the object that people have in view in bringing about a change. Merely because a man thinks that according to his conception he is entitled to sixteen annas in the rupee, he should not press for it if there are other circumstances militating against putting forward such an extreme demand. In ordinary life, differences are justified not on the basis of an absolute standard of justice, equity and good conscience. Real difficulties have to be faced. There is no use in your running away from them. When this Regulation I of 1088 was introduced even though the general sense of the Nayar community was for giving the wife and children a good portion of a man's inheritance, it was, as a first instalment, thought desirable to restrict it to one-half. I do not understand the meaning of it. I suppose during these ten years natural justice and good conscience have been increasing in density or undergoing a radical change so as to justify sixteen annas being given in the rupee while in 1088 they thought that eight annas alone should be allowed. My own submission, Sir, is sixteen annas may have been perfectly right even then. Just to take the country as a whole, to avoid possible opposition, to reconcile conflicting views of society, as a safe instalment, they said, they would give them one-half of the estate left by the individual. Now, there has not been any serious dislocation in consequence of a legislative change, and it is considered that society is ripe for a further onward march and the Bill proposes to give the wife and the children of a Nayar husband a title to succeed to his entire inheritance. Something like that is sought to be introduced in the relation of a non-Nayar also. Well, that is a point, as I submitted, in which I have got very honest differences of opinion with my friend. I may say that there is nothing illogical in the claim, that there is nothing unjust in the claim. But the question is whether you ought to insist on it at the stage in which we stand at present. Are there not difficulties that other communities have to face? Are they to be absolutely ignored? In the interests of good understanding and of peace, I may at a later stage suggest what I consider would be fairly good lines on which the extent of the inheritance may be fixed.

Then, as regards the parties who are to be taken into account in dividing the inheritance, my friend provides this at present. These are, as I submitted, the general observations on the proposition as a whole. I am merely drawing my friend's attention. If that was an accidental omission, I wish that mistake could be rectified later on. In the clause

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that he is moving, Sir—sub-clause (1)—he says: "If such non-Nayar leaves him surviving also any non-Nayar widow or widows, undivided non-Nayar children and lineal descendants of such pre-deceased children entitled to succeed to his estate under his personal law, the property of such non-Nayar shall be divided among his Nayar and non-Nayar widows, children and lineal descendants of pre-deceased children" in a certain definite form. I have to put it to him whether the omission of the mother and of the father of the deceased was accidental or deliberate. The mother is brought in in the case of succession to a Nayar male. The mother of the non-Nayar is excluded from consideration in the clause put in by my friend. Well, I think it might be an omission. It is likely to be purely accidental. If the mother of a Nayar is considered to be fit to share in the estate of the son, the mother of the non-Nayar is entitled to equal consideration, because, after all, Sir, under the Hindu Law a son is bound to maintain his father and mother even though he has not acquired any property from the father. A duty is thrown on the son to maintain his father and mother. Apart from the duty that the *Dharma Sastra* has imposed, all considerations of justice, natural justice, the mother certainly—of course subject to correction by my friends—according to me, Sir, is entitled even before the wife herself, even before the children themselves. So, the mother also should be brought in on the analogy of the Nayar mother getting a share along with the wife and the children. I would go further and say that with reference to the non-Nayar the father too should come in. So far as the mother is concerned, there cannot be any serious objection at all. But the father too should come in. There is the question of blood relationship and then there is the question of the desirability of maintaining one's parents in exactly the same way in which one is required to maintain one's wife and children, whatever it may be in other countries, where parents do not feel that they have an obligation to maintain their grown-up children, and where sons do not feel that they have an obligation to maintain their aged parents. But, in India, the spirit of the joint family is still sufficiently strong to induce one to realise that one owes a duty to one's parents to maintain them and the necessity for such maintenance may also be recognised by the statute and they too may be brought within the sphere of the sharers when the estate is divided. My friend may say they are not entitled to a share. No, but they are entitled to be maintained. Here, in determining the rights of the Nayar co-sharers, certain persons who may have got a claim for maintenance or inheritance are taken into account for purposes of getting it; the result was the estate was to be divided equally among the mother, widow, children, non-Nayar widow, and children. The non-Nayar mother is kept out. The mother also necessarily should be entitled to a share and I am just suggesting that the father also must come in. Even if there is a difference of opinion for bringing in the father in sub-clause (1), it is certainly necessary to bring in the father in sub-clause (2) where it is said: "If such non-Nayar has no such non-Nayar heirs but leaves surviving him his mother or members of her thavazhee entitled to succeed to his property under h

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personal law, the mother and in her absence, her thavazhee should take a share equal to that of a child." When I drew the attention of my friend to that portion of it, and pointed out that the Hindu Law does not recognise any thavazhee, there was the suggestion that it was intended to apply to non-Nayar marumakkathayam people. Of course, there is the question of non-Nayar marumakkathayees who are consorting with Nayar ladies. It is proposed to omit makkathayam mothers and fathers out of that category too. It is defective drafting. That is all I am submitting. Probably my friend thought that the ends of justice would be met if he put in the mother and members of her thavazhee. It would be correct so far as the marumakkathayees were concerned. But, when you are dealing with makkathayees, the correct position would be to include the mother, the father and his children. The father's children would correspond to "her thavazhee" in the case of marumakkathayees.

There is another point that may have to come in for detailed consideration at a later stage. Coming back again to sub-clause (1), my friend has put in the word "undivided." "If such non-Nayar leaves him surviving also any non-Nayar widow or widows, *undivided* non-Nayar children and lineal descendants"; that is to say, Sir, children who are divided from the father should be excluded from the inheritance. The difficulty there is that you do not put in the word "undivided" in dealing with the estate of a deceased Nayar.

PRESIDENT: Are you not dealing with Mr. Subba Aiyar's amendment?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): There are objections to the substituted clause as a whole. It was therefore that I was suggesting that all of us were labouring under special difficulties in the consequential change. I would make certain general observations without going into detail—general observations on the clause as a whole as discussed by my friend and finally take up the specific amendment moved by Mr. Subba Aiyar. It is merely to point out the difficulties in the way of accepting the clause as it is. It may be defective drafting or it may be deliberate drafting. If it is deliberate I am just suggesting that you do not exclude divided heirs when dealing with the estate of a Nayar. There is no necessity for excluding them when you are dealing with the estate of a non-Nayar. The right of inheritance follows as the result of consanguinity which should not under any circumstances be altered by the accident of any partition. After all there may be cases under Hindu Law in which you can take a division only with reference to the ancestral property, and as regards Nayar tarwads only with reference to tarwad property. There may have been tarwad property, and the tarwad property may have been divided, and part of the tarwad property may have passed on to one of the men. His heirs are entitled to get it. I mean, if other heirs, sisters or brothers, are divided, in certain circumstances they may come in as heirs. The claim has to be determined on the ground of consanguinity

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and propinquity and not on considerations of the fact of division. Now that was correctly appreciated when dealing with inheritance to Nayar intestates. But the provision of division is brought in to complicate the situation. That is a point which will have to be seriously considered.

Having made these general observations, Sir, to which I believe the House may have to come back at a later stage when specific amendments are moved in detail, the amendment of Mr. Subba Aiyar to Mr. Narayana Pillai's amendment was the introduction of words which would have the effect of not extending the clause to marriages now subsisting. That is to say, the Nayar ladies and children are given the right of succession to non-Nayar husbands and fathers. Mr. Subba Aiyar's argument is that this should not be made applicable to existing marriages, because the existing marriages were contracted under an entirely different conception. There is no use in my friend's inviting us back to natural justice. I have dealt with it in detail. Natural justice may point to a particular course; expediency or fairness may point in entirely a different direction. Well, are we justified now in conferring this right of inheritance with reference to marriages that were contracted before the commencement of this Regulation? Now, there, Sir, that question may be viewed from two standpoints. When once you recognise the legality of the marriage, let inheritance follow as a matter of course. I have said enough to point out that we have not acted on that conception at any time in the past. That conception has not been accepted as final in other countries as well or among other communities as well. For certain specific purposes the legality of the marriage was recognised and restricted to those purposes. Do not extend it as regards marriages that were solemnised before the commencement of this Regulation. When the marriages were contracted, the Nayar wives and their relations did not expect as of right to succeed to the estate of the non-Nayar. Of course it is a civil contract, and when the parties entered into the contract the understanding that could have been entertained by the bride's party would be that this gentleman would maintain his wife, that he would maintain his children, that he would, within his means, give them enough to maintain themselves in a respectable position after his death. Reliance was placed upon the fair-mindedness, upon the sense of duty of the husband, rather than upon a remote possibility of the Legislative Council conferring on them the right of succession. You cannot say that is an expectation and that therefore it should be satisfied. I am just submitting it was not so. If there is any evidence collected by an organised body available to this Council to consider, it is the evidence of the old Marumakkathayam Committee. I should not be understood as suggesting that in the matter of progress we ought to stop whether they ask us to stop or not. That is not it. In the matter of evidence collected by them, with reference to the state of things obtaining in the country, they tell us that there are Nayar ladies, aristocratic ladies, and those who think it absolutely necessary to continue marital relations with *dvijas*—Brahmins, Kshatriyas and others. The question was pointedly put by them to representative Nayar gentlemen who were examined by them as witnesses—

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"Look here! Do you want rights of inheritance?" They said: "Well, if you are going to insist on rights of inheritance following as a consequence of this marriage, we are not prepared to give up those alliances." That is the conclusion that they reached. Of course, it must be only a very small number and these non-Nayar marriages also must relatively be small and these ideas of importance and prestige are likely to be confined to a small section of the community. But it is an important minority. We ought not to ignore it. With reference to them, the majority of witnesses examined by them on this point said: "We do not want rights of inheritance. Let us have those marriages recognised as valid marriages hereafter also." They also found as a matter of fact that these non-Nayar gentlemen who contracted marriages made a suitable provision for the maintenance of their wives and children. It is not a case, Sir, where the legislature is called upon to rectify a serious wrong. That is not it. The legislature can only be called upon to give legal recognition to a fairly well-understood course of conduct obtaining in the community as the result of this relation. So, as a matter of fact, they have been providing for their wives and children. That fact was recognised in the report itself. Well, I dare say, provision has been made and what is it that our friend wants us now to do? Provision would have been made in favour of the Nayar wife and children, because if the husband would not do it those children would not get anything. Therefore, during his life-time he makes a provision. That non-Nayar is not bound to make any provision for his relations because already they would succeed on his death. But the other children would not get it and therefore they have been making provision for their Nayar wives and children. That is being done. Well, that is not ignored. The man dies. Divide it equally. Now, at the first blush, certainly that does not strike as fair. There have been instances where it is customary to make provision. Legally there is no proposition that that should not be thrown into the hotch-pot. So, *prima facie*, I am just submitting that there is that difficulty. My friend proposed to get over the difficulty in two ways. One is that we give them a free right of testamentary disposition of the property. I do not think we need take him seriously. Why should we have any law of succession at all? That is no argument when I pointed out that there are practical difficulties in the way. For, justice in some cases would appear to be injustice in other cases. My friend turns round and says we propose to give him testamentary right of disposition. After all a man has right only to deal with the property as he chooses during his life-time. After his death it is none of his concern. It is for the State. Of course to a certain extent it is so. But supposing the State one fine morning says every man that dies intestate shall have his property annexed by the State—

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Exactly, that is not an impossible contingency in the light of advanced socialistic ideas.

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RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I decline to believe that they are ever going to take any right at all. It is absolutely foreign to the genius of our civilisation and let us not lay the flattering unction to our soul that justice would not suffer when once you empower a man to dispose of his property as he chooses. To a certain extent it is so. I now put it to my friend that a man certainly would not take care to exercise that right just to deprive a particular class of heirs from the right of succession. If you call upon him to do it, you are asking him to do something cruel. He might as well say: "Let the State take care of it; let those who want to inherit fight it out in a court of law. I am not going to put my finger into the purse at all." That probably would be the frame of mind of some who want to take advantage of the statutory power just to cheat a particular class of heirs. I say that provision would be availed of not by the man who has a sense of responsibility. But in the case of a man who has no responsibility he might mischievously include the parties to cheat a particular class of heirs and he might cheat not merely his Nayar wife and children but he might cheat his parents as well. We have good men and bad men in all countries. Probably some of these people may find it a very useful instrument in their hands to effectuate their intention. But, generally speaking, that testamentary power unfortunately is not availed of in India to the extent to which it may with advantage be used. In the West we are told that every man has his will. He makes his will and he goes on adding codicils to it or changes. There are very few who do not do it. But here in India there are very few who take to it. There is nothing serious about it. A popular superstition, I might say, current amongst the people is that no man should draw up his will. It means an indication of the coming shadow that he will die soon, a most unreasonable view from the standpoint of students of modern culture who have received their training in schools and colleges. But there it is. Human nature is not perfect. Otherwise, Sir, there is no necessity for any legislation at all. If each man is going to transact his business according to the general conception, there is no necessity for the State to interfere at all. That is not an argument, I am just submitting deliberately. Merely because you give a man the right of testamentary disposition you should not propose to deal with it in a way in which it fits in with your idea of natural justice but which will militate against the idea of natural justice entertained by somebody else. When my friend puts forward that argument what is the implication thereunder? No doubt I recognise there is some difficulty. I do recognise that the non-Nayar husband is placed at an advantage, and that the non-Nayar wife and children are handicapped. But we are going to strike off your fetters and make you a free man so that you may deal with them as you choose. That is not an argument.

Then the only other argument is the argument relied on by my friend. It is for the State and not to the individual. Why should he worry himself? Why should my friend worry himself? Why should I worry myself? There is no necessity for our worrying ourselves,

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[Rao Bahadur K. A. Krishna Aiyangar.]

if after all it is to be purely the function of the State; and the function of the State has to be exercised under certain well-understood limitations. Social legislation and social reform, as I conceive them, should be carried on along the lines of least resistance. That is not an observation for which I take credit. It is an observation, Sir, made by as great a man as Justice Telang and reaffirmed by Justice Ranade— two of the great protagonists of social reform in India in recent times who said that social reform should be carried on along the lines of least resistance—not that you should shut your eyes, work and carry on reform, but as far as possible take society with you. The other day when His Excellency Lord Goschen was addressing the Madras Legislative Council, he said that the test of fitness for democracy of a democratic assembly is its preparedness to protect the interest of minorities. (Mr. N. Kumaran: *Hear, hear.*) The State owes a duty and the Council also owes a duty to the minority whose voices cannot be represented in this Council, to see that their interests are also taken into account before we disturb them. That is what I mean. I do not ask you to confer a right on the minority sacrificing the interests of the majority. That is not it. Do not take away the right of the minority merely because they are the minority—minority that cannot make its needs felt. So I am just putting it, leaving it to the sense of fairness of the members of the House, that these are considerations which have to weigh with us considerably in matters of social legislation. I leave it to the House to say whether in the present stage when we are, for the first time, introducing a statutory right of succession, we should make it retrospective in its operation, retrospective in the sense that one fine morning we go and tell one man that he gets more than he expected and another man that he gets very much less than he expected. My friend may turn round and say: 'Is not my community placed in a similar position? We were getting nothing till 1088. In 1088 the wife and children got a right for one-half of the property of the deceased person. The sisters were deprived of their expectations to that extent. Now in this Bill the sisters and brothers are being completely disinherited and the whole property goes to the wife and children.' My answer is simple with reference to that. The property does not go out of the community. What the sister may lose as sister, she will gain as wife. That is the point. If a man's sister is not getting anything out of her brother's acquisition, she will get the whole of her husband's acquisition. There is the law of compensation. There is no injustice in it. The property does not go out of the community. Well, it cannot be so in the case of a non-Nayar husband. There is no law of compensation coming into play. The analogy would not hold good. I may go one step further. Is the Nayar community, as a whole, prepared to accept it? If any respectable portion of that community comes forward and says 'This is unconscionable; the sister should not be completely disinherited.' Certainly that is a question which this Council is bound to take into serious consideration. Even in that question, I may say, there is not absolute

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unanimity, because, while discussing an earlier paragraph, I found that some of my Nayar friends voted only for the half of the property going to the wife and children, and for the existing Regulation continuing to operate. I am submitting that, in this matter, we should not attempt to administer absolutely what we consider to be justice, in full measure. The other day, one of my friends, while discussing the question, drew my attention to the provision in the Regulation, that the husband is given the right of succession to the Nayar lady and said that it was only fair that the wife and children should be empowered to succeed in the case of existing marriages also. No doubt, there is force in the contention. I find in another amendment suggested by my friend Mr. Subba Aiyar, provision being made that parties to marriages contracted before the commencement of this Regulation should have no rights of inheritance. Of course, that point was brought to my knowledge, but this is the first occasion when we are dealing with the vexed question of the non-Nayar. I only say that Mr. Subba Aiyar has tabled an amendment with reference to that question. I do not want to take up that question now, for that may be considered purely advantageous to one side. I only say, no rights, no liabilities, on both sides. If, after the passing of this Regulation, a non-Nayar, who has been distinctly told 'Hereafter you have got the serious duty as a responsible member of society to support and provide for your Nayar wife and children,' goes in for an alliance with a Nayar female, I may say, there is absolutely no harm in penalising such an individual. I am, at present, not concerned with the question of invasion or invitation. Whether the non-Nayar husband entered into the alliance as a result of invitation or whether he invited himself, it does not make any difference. I only say that, however it may be, if after the passing of this Regulation, and knowing all the consequences of an alliance with a Nayar female, a non-Nayar male enters into marital relations with a Nayar female, there is absolutely no harm if you do not give him any protection. We cannot say he has been disappointed. Disappointment necessarily comes in only when something was expected and when it eventually turns out that that expected thing could not be realised.

I do not like to take up more time of the Council. Whatever be our individual opinions about natural justice, equity and good conscience in the abstract, there is no use in our revolving in the land of the ideal world. We must come to the bare realities of life around us and try to enact a measure which will have the largest amount of co-operation and support. On that basis, I am for supporting the amendment moved by Mr. Subba Aiyar.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Sir, I beg to oppose Mr. Subba Aiyar's amendment, limiting the operation of Section 22 to marriages contracted after the passing of this Regulation. Mr. Subba Aiyar wound up his speech on the amendment by an appeal to the sense of justice, equity and reasonableness. Mr. Krishna Aiyangar has also emphasised upon the sense of fairness which should actuate this Council in carrying the amendment of Mr. Subba Aiyar. From the speeches of Mr. Subba Aiyar and Mr. Krishna Aiyangar, I

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[Rao Bahadur K. A. Krishna Aiyangar.]

presume that all that could be said in favour of the amendment, has been said.

PRESIDENT: There is something more, perhaps.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): By that I mean that, since they have dealt at it at very great length, they have spoken on all the points that they thought were powerful enough to influence this House to carry the amendment.

PRESIDENT: Mr. Krishna Aiyar has tabled more or less a similar amendment. He may have something to say.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): That amendment goes still further. Mr. Krishna Aiyar proposes in his amendment to restrict the operation of Section 22 to marriages contracted after the passing of Regulation I of 1088.

PRESIDENT: Anyhow that is not before us; you may proceed.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): So far as the merits of this amendment are concerned, the question has been elaborately dealt with by Mr. P. K. Narayana Pillai on the last occasion. I find that his arguments were exhaustive enough to answer the points raised by Mr. Subba Aiyar and Mr. Krishna Aiyangar. Sir, the amendment proposed by Mr. Subba Aiyar appears to me to be illogical, unfair and unjust. The position that has already been accepted by the House is that Nayar females having marital relations with non-Nayar males should have a right to inherit a portion of the property of the deceased husband.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): May I know where it has been admitted by the House?

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): 'The House has *accepted*.' I said.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): May I know where it has been accepted by the House?

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): I deliberately say that the House has accepted the position because Mr. M. Raja Raja Varma brought in a motion to the effect that Nayar females having marital relations with non-Nayar males should have only a right to maintenance and not to inherit the property of the husband.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I rise to a point of order. I think the question was raised on an earlier occasion and you ruled that the question has not been decided. Mr. Raja Raja Varma brought forward a motion that Nayar wives of non-Nayar husbands should have a right only to maintenance. That motion was thrown out by the House. From that, my friend deduces that the House has accepted that the Nayar wife should have a right to succeed to the estate of the non-Nayar.

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PRESIDENT: That is how he interprets it; you may contradict it.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): That may be his view. But, that the House has accepted it, is a statement of fact. It may be an implication which he thinks he is justified in drawing under the circumstances. The two things are quite different.

PRESIDENT: Yes.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): I suppose there is no point of order. It is only a matter of interpretation or inference. Whatever that may be, I think I am at liberty to refer to the proceedings of this House. The proceedings of this House show that as soon as this Section 22 was taken up for discussion, a motion was brought forward to the effect that Nayar females should have only a right to maintenance. Then the subject was discussed at very great length in this House. I would only refer Mr. Krishna Aiyangar to the proceedings of this House which show that the basis of the discussion centred round only one question as to whether the right of inheritance or the right to maintenance should be conferred by this House on Nayar females having marital relations with non-Nayar males. The whole question was thoroughly discussed, and Mr. Raja Raja Varma himself, in his speech while moving the amendment, very elaborately dealt with the question of conferring the right of inheritance on the Nayar female having marital relation with a non-Nayar male and said that he would give only a right to maintenance. Mr. Krishna Aiyangar might remember that that position was rejected by this House, only four members being in favour of Mr. Raja Raja Varma. Now, it is absolutely immaterial for my friend, Mr. Krishna Aiyangar, to suggest or to argue the question whether there are, among certain sections of Moplahs or among kutchi Memons or among any other class of people, a system whereby, although the marriages may be legally valid for all legal purposes, the right of inheritance need not necessarily follow.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Is Mr. Paramesvaran Pillai aware that Mr. P. K. Narayana Pillai discussed that question eventhough it was accepted by the House that natural justice requires that there should be inheritance following marriage?

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Yes; I am aware of that. I say that even Mr. P. K. Narayana Pillai in discussing that amendment need not have referred to those cases.

MR V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Mr. Krishna Aiyangar's reference to those instances is only in answer to Mr. P. K. Narayana Pillai's argument.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Now, I would only refer to the deliberate and considered opinion of Mr. Subba Aiyar and Mr. Krishna Aiyangar, as stated in their joint dissenting

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minute in the Select Committee's Report, where they have stated that a right of inheritance may be given to the Nayar females having marital relations with non-Nayar males.

RAO BAHADUR K. A. KRISHNA AIYANGR (*Nominated*) (*Deputy President*): I do not go behind that even now.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Yes. If Mr. Subba Aiyar and Mr. Krishna Aiyangar question the right of Nayar females to inheritance in the property of the non-Nayar husband, then, the discussion about the custom obtaining elsewhere, the legality of the marriage and at the same time not having the right to inherit the property of the husband, all these may become relevant. Now, my position is only this. Even the mover and the seconder of the Bill have practically conceded the position that the Nayar females having marital relations with non-Nayar males should have a right of inheritance. The further question as to whether the right of inheritance given is proper or just or equitable, cannot arise at all. The House has practically agreed that Nayar wives should have the right to inherit some share at least of the property of the deceased husband. In that case, Mr. Subba Aiyar's amendment appears to raise only a few questions of detail.

In the first place, as to what is to be the extent of the operation of that Section, the time at which the operation of the Section is to begin, whether a particular class of persons and a particular class of marriages should be exempted from the operation of Clause 22, and what exactly should be the share that is to be inherited by the Nayar wife and children, all these are matters of detail. The first point before the House is whether the existing marriages should not be exempted from the operation of Section 22. Much was stated as to the inadvisability of giving retrospective effect to Section 22. In the first place, I am glad to note that both Mr. Krishna Aiyangar and Mr. Subba Aiyar realise that it is not quite correct to say that Section 22, as it is, will have retrospective effect in the accepted sense of the term, because what is meant is that succession opens out only hereafter when the husband dies. What they mean is that because the exising marriages have been contracted on the distinct belief that on no account would any portion of the self-acquired or separate property of the deceased non-Nayar husband would devolve upon his Nayar wife or her chidren, the existing marriages should be exempted from the operation of Section 22. They base it on the ground of contract and distinct agreement. That being the case, it is argued, is it not unfair that in their case Section 22 should apply? In the first place, Sir, I do not find any new obligation imposed upon the parties to marriages. In the second place, the provision will relate only to whatever property remains out of the self-acquired or separate property left undisposed of by the husband on his death. Sir, one of the very forcible arguments advanced by Mr. P. K. Narayana Pillai against the apprehension on the part of

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Mr. Subba Aiyar and persons who think with him, was the fact that the husband has got a right of free disposal of all his self-acquired and separate property. It is open to him to deprive the Nayar wife and children of any right in his property, if he thinks fit. Mr. Krishna Aiyangar carefully pooh-poohed that point and said that it could not have been seriously urged by Mr. P. K. Narayana Pillai. Sir, I do not exactly know why Mr. Krishna Aiyangar did not give due weight to that particular aspect of the question. It was stated by him that no one would have the inclination to dispose of by will, that it would be cruel to dispose of by will, and also that it would be practically cheating one set of people. He also said that people might not be inclined to dispose of by will on account of a sentiment that in case they executed a will they would die soon. Sir, I do not think these considerations are entitled to any weight, nor do I think that these arguments are in any way substantial. For, I do know that Wills are being executed in very large numbers, and even by very old men. Further, in case the husband feels an inclination to give away any portion of his own property to somebody, I do not know why he should not feel inclined to do so. In case the husband does not dispose of his property, why not his wife and children be allowed to take it? As it is, his powers of disposal have been restricted. It is proposed in the present Bill to give him absolute power to dispose of his self-acquired and separate property as he likes. That being the case, I do not see any reason why Mr. Subba Aiyar should apprehend that any particular class of heirs would be unjustly dealt with. Now, Sir, Mr. Krishna Aiyangar appealed to the sense of fairness of the House and also quoted His Excellency Lord Goschen's speech in the Madras Legislative Council that it is the paramount duty of a popular representative legislature to safeguard the interest of the minority. Sir, it is upon that very fundamental principle that I appeal to the House to oppose the amendment of Mr. Subba Aiyar. It is certainly to serve the rights of minorities that I am now pleading. Hitherto, I am sorry to note that the mover as well as the seconder have ignored one fundamental aspect of the question. Mr. Subba Aiyar in his speech stated that the Marumakkathayam Committee, which sat years ago, was of opinion by a majority, that in the case of non-Nayars marrying Nayar females, several witnesses stated that it was desirable to continue such marriages and that they did not want the right of inheritance; and that position was echoed by Mr. Krishna Aiyangar as well. They have built arguments upon it. Now Sir, we have to consider what exactly is the enactment before the House. Is it on a par with the one which was drafted by the Committee that sat more than ten years ago and which resulted in Regulation I of 1088? In fact the portion of the Bill that we have already passed and the portion that is now before the House are radically different from Regulation I of 1088 and from the draft Bill submitted by the Marumakkathayam Committee. I say it is radically different in respect of provisions relating to marriage, divorce, intestate succession and partition of tarwad property. Now, Sir, we have already passed certain very important sections making marriages monogamous and divorce absolutely difficult except under very exceptional circumstances.

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[Mr. G. Paramesvaran Pillai,]

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): May I know whether monogamy is insisted upon retrospectively also?

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Monogamy is not retrospective, but divorce, I suppose, is retrospective. I suppose my friend put in that question only with reference to non-Nayars. I suppose when the Bill becomes law, the husband who has already married one wife cannot take another wife, and if he does so, he will certainly be convicted for bigamy. I do not think there is anything which is not retrospective in the sense in which Mr. Subba Aiyar put me the question.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I will make my question clear. If a man has got two wives now, I suppose he will not be punished for bigamy after the passing of this regulation.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): That is not making monogamy retrospective. I will deal with the four points, *viz.*, marriage, divorce, succession and partition, separately. I have got an object in making a reference to these four points. Divorce under the existing Regulation is entirely different from that in Regulation I of 1088 and from what was contemplated by the Marumakkathayam Committee.

Now, Sir, I want this House to consider not only the cases of these makkathayam females put forward by Mr. Subba Aiyar but also the cases of those Nayar females who are now married to non-Nayar husbands. What is the position, I would ask Mr. Subba Aiyar, of this class of unfortunate women? I would call them unfortunate—they are not yet unfortunate, but they will become unfortunate if Mr. Subba Aiyar's amendment is carried. I ask what will be the effect of such a provision upon that class of unfortunate females who are now married to non-Nayar husbands in the light of the Sections that we have already passed and that we may most probably pass hereafter relating to intestate succession, divorce and partition of tarwad property. Now, Sir, it is a confusion of issues that is responsible for the opposition to the operation of Section 22 to existing marriages as well. It is some misconception that is at the bottom of this opposition. It is after all comparatively a simple matter and does not require all this fuss to be made for the Section not being made retrospective or retro-active. I ask, won't you be disinheriting them of the property from Nayar husbands if you say that the Nayar females who are married to non-Nayars should not have a claim on their husbands' property? How are they different from those widows and children who come into existence after the commencement of this Regulation? In fact so far as these widows and children are concerned there can be no difference. The difference comes in only on the other side, *i. e.*, that of the husband. The husband's property will not be available to this class of females and children only in cases where the husband is alive and the marriage was before the commencement of the

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Regulation In respect of them, I ask is it not disappointment of expectations? Upon whom are they to rely? In the first place, consistent with my friend's position, you should not then have made a provision relating to intestate succession and divorce retrospective in the case of those particular females and children. In other words you should have exempted all these tarwads where females are married to non-Nayar husbands. The Nayar woman married to a Nayar husband is now in the following position, namely, that under Section 12 we have already passed relating to intestate succession, she could not have any expectation whatsoever of the property of her uncle or her brother because it is full makkathayam that is now brought into operation. Mr. Krishna Aiyangar rightly suggested that there is the law of compensation in the case of Nayar females married to Nayar males because what is lost in one case is gained in the other. Exactly so. That is the reason why the provision relating to makkathayam might not operate very unjustly upon the Nayars because what a sister loses from her uncle or brother is gained from her husband or father. I want, Sir, the same law of compensation, the same law of justice, to be extended to these Nayar females as well who are married to non-Nayar husbands. What is the effect of this provision upon non-Nayar females? I again ask. She would not have anything by way of expectation from her uncle or sister, but she is told definitely that her position is different from that of her sister or nieces who are married to—

PRESIDENT: With respect to tarwad property it is all the same.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Yes; we are not dealing with the tarwad properties. We are now dealing with the self-acquired or separate property of a particular non-Nayar male, and not in regard to tarwad or ancestral property. The same is the case among all communities. On the death of a Nayar male we do not get an iota of ancestral or separate property, so that the question of tarwad property must be left apart completely. We are now confining our attention to properties self-acquired and separate of a particular non-Nayar male. In regard to the devolution of that self-acquired or separate property, I ask, where is the justification for drawing a distinction between a Nayar female married to a Nayar male and a Nayar female married to a non-Nayar male? What is the difference and why should we not extend the principle of compensation to these unfortunate Nayar females who are married to non-Nayar males? Perhaps in most cases the Nayar females may not be responsible for such marriages. I ask, therefore, why should they lose what their own sisters or their own nieces or relations would gain by the promulgation of the Regulation by this House? Why should you take away from their own sisters what they can legitimately aspire to? I ask whether there is any explanation for the opponents who advocate this sort of retrospective operation of Section 22, to meet their position. My complaint is that sufficient care has not been paid to this aspect of the question which directly involves a gross injustice to a particular section of the Nayar females and their

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children. Then it is said that the rights of minorities should be protected. Are not they in the minority? Merely because they happen to be in the minority, are we to sacrifice their interest? I would therefore submit that, by the very operation of the law of compensation which Mr. Krishna Aiyangar advocated, the rights of that class of females who are having non-Nayar husbands should be protected and conserved. Then very much was said by way of fairness, natural justice, equity and reasonableness. All these expressions have been very abundantly made use of in the course of the discussion, but I say fairness and justice should not be the monoply of one particular side. It should be extended both ways. (*Hear, hear.*)

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Certainly.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): You want to be fair and thoroughly fair and be fair only to those distant kindred or cousins or heirs other than the widow and children of the non-Nayar male. You want us to be fair and adsolutely fair towards one particular class of people, and that is the heirs other than the widow and children of non-Nayars.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Are we writing on a clean slate? If so, my friend's argument is entitled to weight.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): In respect to this matter, it is a clean slate. We are now legislating for the first time in respect of properties of non-Nayar husbands, and therefore it is a very clean slate that is before us. We should certainly think twice before we commit ourselves. Sir, I want this House to be equally fair to the other classes of people as well. I want to be absolutely fair to both the heirs, namely, the non-Nayar males next in the paternal and maternal line as well as the Nayar female on the other side. Now if this amendment is carried, what is the effect, I ask, in respect of parties to or off-spring of marriages that have already been contracted? You are not going to give any relief whatsoever. Now I ask whether Mr. Subba Aiyar has provided any amendments whereby they can get at least a share how-low-so-ever out of the property.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I would ask my friend to wait for my reply.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): There is nothing whatsoever. The position is sufficiently clear. "You shall have a right to even a small share. I am willing to give that to you only with respect to future marriages, but nothing by way of existing marriages. And then apart from the right of maintenance which, of course they have, they should have nothing else." If it be my friend Mr. Subba Aiyar's position that after the passing of the Bill it shall not confer a new right on females and their children apart from another class of a very

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large majority of Nayar females and children, if no new right is to be conferred, in fairness to this class of people, I say to this Council not to give them a new right, but you should not at least take away the existing right. Since the House has committed itself against this class of people by passing other Sections without any condition attached thereto they lose everything. My friend conceded it was all disappointment of expectations. Yes; it is exactly so. It is the disappointment of expectations that we are now dealing with. In respect of this class of people you have already disappointed them. You said: "You shall not have anything from your brother, uncle or any other. "Further you are going to say: "You shall not have any new rights." Can there be anything more illogical, more unfair and unreasonable for one set of people? I appeal to the House, where is the sense of justice or sense of propriety even for this legislature taking upon itself the power not only of not giving new rights to a particular class of people but taking away that right which they were already having.

It was suggested by Mr. Krishna Aiyangar, and rightly, that if this legislature takes away the right from a particular class of persons by way of compensation they would have another right equally good if not better. Exactly; and that is why we reconcile ourselves to these changes, but in the case of this particular class of persons married to non-Nayar husbands, you not only do not give any right which other people get under the Regulation, but you have already deprived them of their expectation, in spite of the fact that when a Nayar female dies leaving some property the Section is that the non-Nayar husband is to have a share! (*Laughter.*)

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): May I say that it does not come in under this Section? The question of non-Nayar comes in only in Section 22.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): The husband is the term made use of and I did not find my friend protesting then.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I did not protest then because the term non-Nayar comes in only in Section 22.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Section 22 is not exhaustive. It deals only with intestate succession in respect of a certain class of people.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): May I draw the attention of Mr. Parameswaran Pillai to amendment No. 6 tabled by Mr. Subba Aiyar?

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): I am still deliberately saying that on a previous occasion this House accepted the position that, whatever be the nationality of the husband, if he happens to be a husband under this Regulation, he is entitled to a share, under certain circumstances, of the property of the Nayar female. Now it was suggested by my friend Mr. Krishna Aiyangar that there is a proviso to the effect that—

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"Provided, however, that no right shall be conferred under this Section upon a party to, or the offspring of a marriage solemnised—

(*a*) before the commencement of this Regulation ;

(*b*) after the commencement of this Regulation"

and therefore he concluded that the non-Nayar male would not be in a position to succeed to the non-Nayar wife's property. I say, Section 22, if I read it correctly, deals only with this. Section 22 runs as follows :—

"On the death of a non-Nayar male leaving him surviving a Nayar widow or children or the lineal descendants of deceased children or all, they shall, if the deceased has undivided heirs according to the law by which he is governed, be entitled to one-half of the self-acquired and separate property left undisposed of by him at his death, and if there are no such undivided heirs, such widow or children or the lineal descendants of deceased children or all shall be entitled to the whole of such property."

I do not see how Section 22 or the amendment which relates to Section 22, will in any way modify the situation.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*) : Verbal alterations may be necessary.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*) : No verbal alteration will be sufficient. So the husband shall have a share under certain circumstances. In the case of monogamy, in that Section Mr. Subba Aiyar was particular about putting in an amendment relating to non-Nayar husbands. In the absence of such an amendment 'husband' will mean husband according to law and who may be a Nayar or a non-Nayar. Now what I want to point out is that Mr. Krishna Aiyangar was not correct when he said that the amendment of Mr. Subba Aiyar to clause 22 would in a way mitigate the situation. As a matter of fact Section 22 only relates to the intestate succession of a non-Nayar male having marital relations with a Nayar female. The previous Section relates to the succession of a non-Nayar husband also to the property of the Nayar female. In that view, I ask, is it equally fair, is it equally just, is it equally reasonable that the non-Nayar husband should not be under any obligation to the Nayar female or that the interests of the Nayar female should be subordinate to the interests of the distant kindred of non-Nayar male? So the position is this. We are now dealing with only Nayar females who are married to non-Nayar males. In the case of such persons you have already deprived them of their expectations from their own people, *i. e.*, from Nayars. You are not giving them any new right which you have already given to their own sisters and brothers. Not being satisfied with the injury that you have done them you would even make their non-Nayar husbands inherit a portion of the Nayar wives' property.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*) : Suppose suitable amendments are made.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*) : That state has already passed. We did not hear any voice of protest from that side at that time. I appeal to the very sense of fairness, justice, equity and righteousness that actuated in accepting that Section. I

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appeal to the very sense of justice in regard to the situation of this class of persons who have already been injured considerably. So that the only way in which we can compensate them will be to place them on a par with other Nayar females having relations with Nayar males. I can understand the legislature depriving a particular class of people, for no fault of their own, not only of their expectations but of everything if there is a necessity. I can understand all that if there is any necessity for it. As a matter of fact, how does it stand if the non-Nayar dies leaving a caste widow and children? Both the caste widow and children are not disinherited. They get, according to this Section, an equal share with a Nayar female and the Nayar children so that it is not a case where you are disinheriting any particular class of people.

Secondly, what is apprehended on the other side is that, in case the Section is made applicable to existing marriages as well, the feelings and sentiments of those husbands who are already married to Nayar females will be offended. Here are certain facts which are beyond dispute and they relate to a substantial matter. You have placed already in the Statute Book certain Sections. They must operate, and they will operate. They do not tickle your feeling or sentiment. On the one side you have deprived a certain class of people of a considerable share of their property. On the other side, you say that the feelings and sentiments of certain people may be hurt. I would appeal to the House for doing justice, rather than respect certain sentiments that may after all vanish in course of time. With these remarks I strongly oppose Mr. Subba Aiyar's amendment.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I am also against Mr. Subba Aiyar's amendment. The matter has been discussed with so much heat when the atmosphere does not itself—

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): The atmosphere is very cool. (*Hear, hear.*)

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): Yes, it is very cool, in spite of the efforts made by Mr. Subba Aiyar to make it hot. (*Laughter.*) There is a feeling, Sir, on the part of the Nayar community that they have been smarting on account of the absence of a law which provides that the Nayar wife and children shall get the right of inheritance to the property of the non-Nayar husband or father. On the other hand there is a feeling of privilege on the part of certain non-Nayar classes that, whatever be the rule of equity and justice, they have been enjoying the privilege for centuries past and that privilege has to be conceded to them even hereafter. I submit, Sir, that both these feelings are equally incorrect. On the one side there is a little more of justification. I am not going to repeat the words used in the discussion of the amendment. But the statement of the Deputy President—

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I wish to be addressed by name and not as Deputy President.

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MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I mentioned the term 'Deputy President' in order to show that the position I am taking is a very strong one, because the Deputy President of this House has got a certain high position which we are prepared to recognise. Therefore, although in ordinary cases I should address him as Rao Bahadur Krishna Aiyangar, I should mention the title of Deputy President in this instance. The Deputy President said that there was great 'fire' and 'fury' just when he got up to speak on the previous occasion. Such expressions coming from him are surely indicative of the feeling of the House. Now, Sir, on account of this unpleasant feeling which has been generated apparently by excitement and partly by the course of argument in this House, the intelligence of the very learned members of this House has taken a course and dug deep channels and the channels have overflowed the banks. We therefore find it difficult to view the question in its proper perspective. There are currents and cross-currents; but I think that all these disputes are irrelevant because the position taken does not require any argument. In referring to the different Sections of the Bill the first principle of legislation to be respected is to see that the wife and children are entitled to the property of the husband or father as the case may be. Messrs. Subba Aiyar and Krishna Aiyangar have admitted that a definite share of the intestate's property should go to the children of non-Nayar husbands. The question of minorities has been mooted and Lord Goschen was quoted by Mr. Krishna Aiyangar himself. Sir, the right of minorities is a very old idea in political thought. It has come from the sources of the past and during innumerable centuries the rights of minorities have been respected by all nations. Lord Goschten only reiterated that excellent principle. But that has no application to the fact of the present case, because, as I shall attempt to show to this House, there is no question of violating the rights of any minority in the discussion of this question. I have always stood up in this House for the rights of minorities. I have stood up for the cause of the misradayees in connection with the Ezhava Bill. Even yesterday, Sir, I stood up for the rights of the owners of Edavakais because they are a minority. Now, while recognising the rights of minorities, I must say that this question does not depend upon the consideration of such rights; so that the appeal to the absolute principle of rights of minorities is irrelevant to the discussion of the present case. Sir, it is only when we argue a matter in a friendly manner that we shall be able to come to a proper judgment. However old we may be, however learned and experienced, one's judgment is remote from the throne of reason. On account of prejudice all our efforts will be in vain, and these communities, non-Nayar communities whose individuals have got marital relations with Nayar females--have been getting on amicably with them for a very long time. The Nambudiri, for example, does not think of his existence without the Nayar. The Nayar is prepared to respect the Nambudiri in all the legitimate consequences. So when we are dealing with this question, let us not forget the past,

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let us not forget the present and let us not also forget the circumstance that these communities cling to the Hindu religion, that their social habits are more or less the same and that they have been connected by interaction of a century and more to such a degree. Are these communities to be unnecessarily whipped up to fight their battles for an imaginary cause? Without dragging the name of any community, the excellences of the one or the defects of the other, we have to argue the case on the admissions made by both sides. The gentleman who has brought forward this amendment, Mr. Subba Aiyar, with the experience of so many years of legal training and learning, has conceded that a definite share should be given, and when that is granted why do we go and question the principle? Mr. Krishna Aiyar's amendment, which has been referred to, says that the right in question may be given to the offspring of marriages contracted since 1088. I am unable to see any wisdom in that arbitrary delimitation of time. That would not satisfy any of the parties. In 1088 although 50 per cent. of the Nayar husband's properties were declared to belong to the wife and children after his death, the non-Nayar husbands and non-Nayar fathers were let alone. It has been argued here that the change should be gradual. The legislatures in 1088 and the members of that excellant committee, —the Marumakkatayam Committee—which did such good work with regard to the recording of evidence and formulating of conclusions—a committee presided over by that eminent gentleman who is now witnessing the present discussion—knew that indiscriminate and precipitate attempt at legislation would land the community in sore straits. Therefore, these were not in favour of a law by which a non-Nayar husband's property would devolve upon his wife and children. Twelve years have elapsed, and the fact has to be realised that even among the Nayars the right of inheritance did not exist before 1088, and that from 1088 onwards the Nayars have acclimatised themselves to the altered circumstances. I trust twelve years is ample time for the non-Nayars also to feel that the time has come when, in ordinary justice, and in deference to the feelings of family affection that every man ought to have for his wife and children, his properties should go to his wife and children after his death. Therefore, I see very little force in the argument about time. The only aspect of the question which I wish to argue is with regard to the claims put forth on behalf of communities. Sir, I am surprised that such an argument should be advanced by anybody, because marriages are not between communities but they are between individuals.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Does he realise that the parties to the marriage belong to different communities?

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): Perhaps the communal principle was adhered to in the first stages when the man belonged to totem A and the woman to totem B, in the rudimentary stages of ethnological history. Such a state of affairs does not exist in any civilised society at present. Because A who is the husband happens to belong to a particular caste and B the wife also happens

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to belong to another caste, it does not mean that there is marriage between communities. I am referring to that merely to show that the marriages are between individuals and it is only the rights of individuals that should be safeguarded and not the rights of communities, because they have no general rights to exercise over this important question. It has been argued that at the time when the marriage took place the ideas of inheritance were not present to the minds of the parties, *i. e.* that the male did not think that his inheritance should go to his wife and children. The wife and children did not expect that the property would go to them. But, Sir, expectations are created on account of the onward march of civilisation. The world is changing and the women and children who might not have expected rights at the time when the matrimonial alliance was entered into now find that it is not in consonance with justice and not in conformity with their desires that they should be deprived of the whole inheritance or a share of it. All the same, civilisation has opened the eyes of the other side also and disarmed them so far, though not the militant portion, as to stem the tide of prejudice. They have realised that it is unfair and inexpedient, and I would even go to the extent of saying impossible, to stop the current. And we find, Sir, that the consensus of opinion, at any rate the general opinion, of the individuals of the non-Nayar communities who have got the privilege of marital relation with Nayar women is not opposed to the proposal. That is the strongest argument against the amendment. Sir, when my friend Mr. Trivikramar Vasudevar was talking on a similar motion the other day, I asked him whether he, a member of this Council, representing the Jenmi constituency and a Malabar Brahmin belonging to a very ancient house, did not preside over the Nambudiri Yogakshema Sabha at Trichur and whether anything was mentioned in that Sabha which would show that the great Nambudiri community, which is a very intelligent community and which can understand all that it care to learn, a community which is always willing to do its utmost to safeguard its privileges, was opposed to this Section of the Bill. His answer to the second question was in the negative. When such a gentleman was presiding over that conference and when Nambudiris from far and near were there, not one of them thought of starting an agitation that this Section should be dropped. I would come to the next community in the social ladder, namely, the Kshatriya community, which met in the Changanachery Palace. When Mr. L. R. Raja Raja Varma was talking the other day I asked him if any resolution was arrived at in the conference which had the effect of showing that the Kshatriya community was against the proposal. He also said that there was none. Are we to say that these two ancient, enlightened and privileged communities are entirely indifferent to Section 22? Is it not better to argue that these communities having enjoyed the privilege for centuries and having been able to appreciate the blessings of civilised life have generated such an outlook that they would respect generosity and justice? Is it not therefore that they have

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kept silence? These are questions which this Council has to consider for itself. And my argument in that direction is strengthened by the further circumstance that a similar law was sought to be made in Cochin. The Nambudiris whose prestige in Cochin is far greater than that in Travancore and most of whom are Travancore Jenmies---even they had no objection to that law being enacted. And His Highness the Maha Raja of Cochin, one of the enlightened Indian Princes, himself a Brahmin and one who is, as is well-known, jealous of the privileges of the higher classes—it was His Highness the Maha Raja that passed that law, and the skies have not fallen on the people of Cochin. Is not Cochin now as prosperous as it was? Are Nambudiris prevented from marrying Nayar females there?

MR. L. R. RAJA RAJA VARMA KOIL TAMPURAN (*Edavagai*): Is he aware that there is a provision in the Cochin Regulation providing an exception?

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I know it. I am coming to it. Are the Nambudiris in Cochin, who are of the very same civilisation and who have the same feelings and sentiments as the Nambudiris of Travancore, essentially different from their castemen in Travancore, because there is a canal or a hedge between Cochin and Travancore, which is called the political boundary? So that, so far as the Nambudiris, Kshatriyas and other people who have marital relations with Nayar females are concerned, they are not against Section 22. Their silence is significant. In this very House we have had indications that there are various persons not belonging to the Nayar community who are essentially in favour of the measure. Mr. P. K. Narayana Pillai referred to an honoured name of a gentleman, Mr. Rama Varman Tampan, who has written to the papers about this and also presided over a meeting at which a resolution was arrived at to the effect that there should be no objection to such a provision being incorporated in the Nayar Regulation. Further the Kshatriya community also wants to get a law similar to the Nayar Regulation. In the face of all these facts, how is it possible to attach any value to the amendment proposed by Mr. Subba Aiyar? I quite realise that individuals belonging to certain communities who have entered into matrimonial alliances with Nayar females should not be penalised by the law in any manner. If a serious alteration has taken place in society and a modification of the law is rendered necessary, good sense requires that these people who, having entered into marital relations, have realised the situation as too late and want to be afforded facilities of being relieved of their responsibilities, should know that this is out of the question. If there are people in the country who have such a mentality for which I cannot congratulate them, if there are people who are so very selfish and custom-ridden that they would not come within the purview of this equitable law on the question of inheritance, that is a matter which this Council has to consider, because so far as the Nayar community is concerned, although there was no law of inheritance before, this measure is for the benefit of the Nayar community more particularly than for the benefit of any other. But individuals belonging to other

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communities should not be made to suffer. I may also point out that, situated as this House is, there is a large number of Nayars here. There may not be enough people from the non-Nayar castes. Of course, so far as their population and importance go, I do not say that there should be more. I am only speaking of the actual number. Let it not be said that the Nayars are trying to secure an unfair advantage over other communities. We want to follow the principles of enlightened legislation. Let it not be said that these people were being visited with punishment for having married Nayar women, because the tradition of the Nayar womanhood for the love of wife to husband, and of the children to the father are permanent assets of the Nayar community. Let us not give the world an opportunity to jeer at us. Let us say in straightforward language that if any member of such communities who has contracted marital relations with a Nayar female is impervious to the claims of justice and says that he will insist on getting his pound of flesh and that he may walk out of the decent estimation of decent people—let him have that luxury. While opposing the amendment of Mr. Subba Aiyar I would ask this House to consider whether there should not be a proviso—something of the nature of Section 45 in the Majority Report—which would afford such persons such a luxury. It was argued that the testamentary power was adequate. I do not think so. Mr. Krishna Aiyangar himself, a gentleman of age and experience, has said that there are people who are superstitious enough not to execute wills. If we are prepared to respect superstition in one matter, why not allow it in another matter? Now, occasionally there are people even to-day, who in spite of the blaze of western civilisation, are unwilling to be photographed. I have seen a number of them. And, in the matter of executing wills, the difficulty will be all the greater, because if a will is written, it may contain some expression which would produce an impression in their feverish imagination (you may call it so), that the time is not far when they would die. Why should they be compelled to execute wills? Sir, it has been said that the final word has been pronounced on the question of testamentary disposition. It is not correct. I think it was an erroneous principle that weighed with the Travancore Legislative Council some years ago which induced to pass the Wills Regulation in that manner. It is a novel outlook that has surrenderred society and created trouble. Therefore everything ancient need not be despised. With all the historical peculiarities of western civilisation and peculiarities relating to the execution of wills at the time of the Roman Empire, with the practical experience of testamentary capacity with which European nations are familiar, still there is a distinguished school of thought which he holds that testamentary capacity should be strictly limited in the interest of society, so that simply because a man has got property, he does not get power to transfer it to whomsoever he pleases. There are people who have a claim on their property in the future. To disinherit them by a stroke of the pen and thus to defeat their legitimate and honourable expectations is not a principle which, so far as I know,

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western nations would accept without reserve at the present day. I remember distinguished writers who have questioned the unrestricted liberty to make testaments. All that is material to the present case is whether we should have testamentary power and whether it is good or bad. I am not prepared to say that people should not be given that authority. That is a general question. Let them have it. But in addition to that, in the case of people who are not wise to execute wills and in the case of those who are superstitious and who would not execute wills, let us give another provision and come to a satisfactory solution by either accepting a proviso in the nature of Section 45 in its entirety or adding something which will safeguard the interests of Nayar females to a greater extent. If there is such a superstitious individual who wants to go away from his responsibility in a cowardly manner he may be allowed to go. Subject to these observations, I am against the amendment proposed by Mr. Subba Aiyar.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): Sir, I oppose Mr. Subba Aiyar's amendment. The subject of inheritance in the Bill had already provoked a good deal of discussion at the time of its introduction and has engaged the attention of the Council in all its stages. The question has now come up to the stage of decision by this House and it is for this House to decide whether the claims of the wife and children are entitled to recognition. It might excite the curiosity as well as the sympathy of strangers to watch the discussion in this Council with regard to the justice of the claims of the children to a share in the earnings of their deceased father. The opposition which is now being maintained on behalf of those parents with all the devices of learning and persuasion proceeds on the ground that they have their own heirs according to their own law and that *their* expectations will be defeated, though in the vast majority of cases these *heirs* are not *their* children, but only their nephews, brothers' sons or other distant kindred. It seems Sir, that at every attempt at legislation in this country with respect to the Nayar community, the cry has been raised that the personal law of their non-Nayar relations was going to be endangered. Every proposal, however modest, to recognise the legitimate claims of the Nayar wife and children has invariably met with the stoutest opposition, and it looks as if every step in the process of securing their rights to these children would have to be fought for. In 1071 when the late Mr. Thanu Pillai brought his Marumakkatayam Marriage Bill into this Council with the sole object of securing legal recognition to *sambandham* unions, one of the grounds of objection raised was that it left out the question of inheritance. The Bill which was then sent to a Select Committee has not been heard of again. In 1088 a provision for maintenance in favour of the wife and children was dropped on the assurance of the Law Member that "in course of time their position will further improve". Opposition was also raised in 1096 when an Amended Bill was introduced, but as the Bill was dropped the question did not come up again. The legislative machinery has since then been improved and re-adjusted to deal with such questions of personal law.

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This House is aware that the original objection was against recognising any right of inheritance in favour of the Nayar wife and children, and that, with the acceptance of the principle of recognising the right, other objections are now advanced. The task that lies before the House is to pull down these fortifications one by one, and to secure the barest justice in favour of the wife and children. An impartial examination of the whole question will convince the House that the opposition is as unjust as it is unreasonable.

The non-Nayars who are privileged to marry from the Nayar community belong mainly to two classes of people, people who are the followers of the Mitakshara and the Malabar law and people who follow the Marumakkatayam Law. In the case of all these people, the law with regard to self-acquisitions of individuals is the same. Mr. Subba Aiyar laid stress upon the fact that the vested rights of the heirs under the personal law of these people would be defeated and that it would be "cruel" (to use his own expression) to deprive them of their expectations. We have, in the first place, to remember that we are only dealing with the self-acquisitions of the intestate and not his undivided share in the coparcenary property. In the case of those who follow the Mitakshara and other allied systems of law, self-acquisitions are always difficult to be made out and the strong presumption in favour of the acquisitions being made with the aid of joint funds makes it extremely difficult for self-acquired property being made available for the purpose of inheritance by the Nayar wife and children. The result of restricting the inheritance to self-acquisitions and separate property alone is, in fact, to make the provision for a share in the inheritance almost illusory. Bearing in mind that the whole controversy relates only to this kind of property, we have to examine the contention raised that it is "cruel" to deprive the heirs of their expectations. The independent and absolute right of disposing of self-acquisitions during their life-time is given to them by judge-made law. The law with regard to self-acquisitions has been evolved by judicial decisions. It is a peculiar feature of judge-made law that it is always retrospective in its operation. The decisions on the subject of self-acquisitions have also been comparatively recent. The acquirers can now completely disinherit their heirs so far as their self-acquisitions are concerned. Changes have also been effected by statute and under the existing law in Travancore to the effect that they can will away half their acquisitions. Their self-acquisitions descend now to the nearer heirs in preference to the remoter heirs, though of the same undivided family. Creditors can always proceed against the self-acquired property of the debtors. In fact the utmost freedom to deal with self-acquisitions has been given to them and the heirs have not complained and could not reasonably complain that their expectations have been defeated. The personal law with which we are then dealing is thus the judge-made law and not the Sastraic law; and no one has a vested right to succeed to self-acquisitions. Indeed Mr. Subba Aiyar himself conceded that the *vested* right of which

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he spoke was not any kind of vested right which is known to the law. If the so-called heirs are prepared to submit to all these changes in the law of self-acquisitions, there cannot, it seems to me, be any justification for the contention now raised that it is "cruel" to defeat their expectations.

One of the reasons urged in support of the proposition that no provision for inheritance should be made in favour of the Nayar wife and children was that there was no necessity for it. Mr. M. Udaya Varma Raja himself acknowledged that they regarded such marriages as no less sacred than marriages performed before the nuptial fire and that non-Nayar fathers as a class are not less affectionate or solicitous for providing for their Nayar children than their Nayar fathers. Mr. M. Raja Raja Varma also argued that there was no necessity for introducing such a claim on the ground that the wife and children are seldom unprovided for by the husband or father whether he be a Nayar or a non-Nayar. He assured us that instances are rare in which a non-Nayar has cast away his wife and children without any provision for their maintenance according to his means. Several non-Nayar gentlemen have also expressed themselves to the effect that the right of inheritance should be allowed without any restriction with regard to existing marriages. In the sister State of Cochin where non-Nayar marriages are more common, a law not only legalising existing marriages but also at the same time giving a right of inheritance in favour of the wife and children of such marriages has been passed by H. H. the Maha Raja of Cochin where the Royal family itself follows the Marumakkatayam law of succession. The idea of exempting existing marriages entirely from the operation of this Regulation did not occur to the non-Nayar gentlemen of Cochin and they do not seem to have raised any such objection as is now put forward. Safeguards similar to those in the Cochin Regulation have also been provided in this Bill.

In the face of this admitted practice and of a law in the neighbouring State of Cochin where exactly similar conditions prevail, where is the justification, I ask, for the objection so stoutly maintained against the enactment of a provision in effect legalising the existing practice? One would have thought that the existence of the practice was a reason *for* instead of its being an objection *against* the proposed legislation. The interference of the legislature is required only for the purpose of recognising this practice. As Sir Henry Maine observes, it is the timely codification of customs that prevents the degradation of national institutions and affords protection to the people.

The argument founded on the assumption that the law will have retrospective operation is absolutely devoid of any foundation, and I earnestly beg to emphasise the fact that there is no question of retrospective operation at all in this case. It is only to cases of future intestacy that the law will apply; but Mr. Subba Aiyar contended that, as the law was intended to apply to existing contracts of marriage, it must be deemed to have retrospective effect. His argument was that, as the question of inheritance was not in the contemplation of the parties to

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the contract of marriage, the imposition of such an obligation on existing marriages is wrong. This argument assumes that the terms of the marriage contract are fixed at the sweet will and pleasure of the parties concerned and that there is no justification for the State imposing any obligation on the parties and that it is therefore based upon a fundamental misconception of the law of marriage relations. The argument can only be supported on the assumption that the obligations of marriage are matters of bargain between the parties, and I sincerely trust that such a proposition will hardly meet with any acceptance in this House. Mr. Subba Aiyar also built up an argument upon the fact that the Regulation of 1088 did not make any provision for inheritance and that there was an assurance given by the Marumakkatayam Committee to the non-Nayars contracting such marriages that no right of inheritance would be attached to such marriages. The opinion of the Marumakkathayam Committee on a question of fact would have been of some value, but on a question of the legality of making provision for inheritance it need not prevent us from considering the question on its merits and in the light of our own knowledge at the present day.

But if the argument is intended to show that marriages have been entered into or continued on the faith of this assurance, it seems to me that the suggestion is preposterous and the implication conveyed by the suggestion is to say the least unjust. After all we find from the Marumakkatayam Committee's Report that the Committee was under the impression that they were precluded from making any recommendation affecting Brahmins and Kshatriyas by the terms of reference made to them. Mr. Padmanabha Menon, one of the members of the committee, however, said:

> "I think it would be invidious and unjust to recognise two classes of *Sambandhams*. I am therefore of opinion that the wife and children should be entitled to their inheritance from their father whether he belongs to the Nayar caste or to a higher caste."

We are thus only seeking to rectify the mistake of not providing for inheritance in the case of the non-Nayar husbands when the law recognising the legality of their marriages was passed in 1088. It is the duty of this Council to see that the mistake committed in 1088 is rectified. Marriage must be deemed to be a part of the personal law of any people, and if that personal law is so far capable of being infringed as to allow such unions, I do not see any justification for not making the necessary and the inevitable provision for meeting the obligations of such marriages.

No doubt the term "contract" has generally been applied to the relationship of those who enter into matrimonial relationship, but marriage is more than a contract; it is a status, the conditions of which are regulated *for* and not *by* those who enter it. It is thus not a mere contract; it is an institution. From this fact—that the social union of the spouses is a status and not a mere contract—flows one important result, namely, that the State or legislature has it in its power to cure an invalidity arising from mere defects in form where the parties marrying had a matrimonial intent: so too, on the contrary, it can render null and void marriages already contracted if it thinks fit so to do. (*Eversley on*

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the Law of Domestic Relations, p. 5). On the subject of marriage relations Mr. Justice Padmanabha Aiyar quotes in the only case on marriage which came up for decision before the High Court the following observations from a high authority :—

"The legal consequences of marriage depend in almost every civilized country not upon the will of the parties to it, but upon the law which governs them. Parties may choose not to marry; but if they marry at all, they must do so not upon their own terms, but on terms fixed by the law under which they live. If they once contract the tie, they cannot afterwards break it, even if they both agree, unless the law allows it. For this reason, it has been sometimes doubted whether marriage is, properly speaking, a contract. 'It is rather' says Story 'to be deemed an institute of society founded upon the consent and contract of the parties and in this view it has some peculiarities in its nature, character, operation and extent of obligation different from what belong to ordinary contracts'."

As a Scottish Judge observes: "It differs from other contracts in this, that the rights, obligations or duties arising from it are not left entirely to be regulated by the agreements of parties, but are to a certain extent matters of Municipal Regulation over which parties have no control by any declaration of will." Lord Stowell says: "In civil society it becomes a civil contract regulated and prescribed by law and endowed with civil consequences. In most civilized countries acting under a sense of the force of sacred obligations, it has had the sanctions of religion superimposed. It then becomes a religious as well as a natural and civil contract; for it is a great mistake to suppose that because it is the one therefore it may not likewise be the other."

It is thus clear that the parties have no right to fix their own terms, and it is the duty of the State to impose conditions which it deems proper and just whenever justice and public policy require such a course. The contention that inheritance was not in the contemplation of the parties has absolutely no force, as inheritance is a matter of obligation which the State has to impose in the interests of social well-being.

The move for the secularisation of marriage legislation in almost all the European countries and in America during the middle of the 19th century was on account of the recognition of the paramount necessity of controlling the marriage relations by the State. The Matrimonial Causes Act, 1857, was applicable to marriages made before the Act came into force and it amounted to something like a legislative declaration that the right to divorce did not depend on the terms of the marriage contract. Illegitimate children have been legitimatised by the subsequent marriage of their parents through legislative intervention. In all these cases it was never thought that the legislature could not bring about changes in the laws of marriage so as to affect existing marriages merely because these changes were not in the contemplation of the parties at the time of the marriage. I have ventured to refer to the principle of State interference in civilized countries in order to show how fundamentally erroneous is the position taken up by Mr. Subba Aiyar when he said that the existing marriage relations should not be interfered with.

Much was said about minorities and the duty of this House to respect their sentiments. A minority should not be unreasonable and

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should not regard another community struggling for progress as existing for their convenience and confort alone. In regard to the position of minorities I shall only refer to the following observation of Mr. B. K. Acharya :—

"This argument if based on any reason is this, that it is just and equitable not to legislate in such cases. If the principle of justice, equity and good conscience require that there should be no legislation in such cases, that very principle also requires for the welfare of the majority that there should be legislation in such cases".

In conclusion I hope that the honourable members of this House will not change their notions of natural justice and fairness in spite of the appeal just made that these notions are variable and stand in need of change with the varying needs of the times.

The Council adjourned for lunch at 2-5 P. M. and re-assembled at 3-5 P. M.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Sir, I beg to oppose the amendment moved by Mr. Subba Aiyar. On going through Mr. Subba Aiyar's speech made when moving the amendment for the acceptance of the House, one finds the following grounds raised by him as the reasons supporting his amendment. Firstly, he observed that the report of the Marumakkatayam Committee, appointed to consider, as a preliminary measure, the introduction of Regulation I of 1088, says in certain places that a major portion of the aristocratic witnesses examined by them were prepared to forego the right of inheritance from a non-Nayar husband. From this particular fact, Mr. Subba Aiyar argued that it must be taken as an assurance given by the Government or at least by the members who constituted the Committee that submitted the report in question. Secondly, Mr. Subba Aiyar argued that, since that particular Committee's report was considered by the Legislative Council at the time of enacting Regulation I of 1088, it must also be taken that the Legislative Council itself gave an assurance to the non-Nayar communities in the State that nothing like inheritance would be claimed from them when they contracted marriage with Nayar females. These are the two frontal propositions urged by Mr. Subba Aiyar as supporting his view that all the existing non-Nayar marriages must be excluded from the purview of the amending Bill now before the Council. Let us examine these two arguments.

I fail to see how it was competent to the members who constituted the Marumakkatayam Committee to give an assurance to the non-Nayars except on their own behalf. Mr. Subba Aiyar did not deal evidently with the assurance given by the members of the Marumakkatayam Committee as one given in their individual capacity. He said that it was an assurance given on behalf of the Nayar community. If it is an assurance on behalf of the Nayar community, but without any authorisation by the community, I fail to see what value, even if the members of the Marumakkatayam Committee gave it, can be attached to

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such an assurance. May I also consider the question of the so-called assurance given by the Legislative Council? Sir, in the matter of enacting laws certain *prima facie* facts are laid before the Legislative Council, and measures are enacted in accordance with them. If the enactment of a particular measure means that an implied assurance may be spelt out of it, then the greatest offender in the matter of breach of faith is no other person than my esteemed friend Mr. Subba Aiyar. If, in the matter of reconsidering enactments, and submitting Bills for the consideration of the Council, say Bills like the Civil Procedure Code Bill, the Limitation Regulation Amendment Bill or any other Bill, for amending Regulations once passed by the Council, Mr. Subba Aiyar is not prepared to pay any heed to any assurance, what weight are we to attach to the cob-web of his contention that we should not violate the assurance arasing from the enactment of the Nayar Regulation? But Mr. Subba Aiyar does not feel any such restraint and with an activity which is unparallelled and marvellous—

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I am glad that he appreciates it.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): comes forward with measure after measure so that existing Regulations may be amended by the Council. Therefore, I would submit that the argument that, once a piece of legislation is placed upon the Statute Book it amounts on the part of the Legislature to an assurance that nothing further would be done even in the matter of amending it, is an argument which need only be mentioned that it may be condemned. (*Laughter.*)

MR. M. RAJA RAJA VARMA (*Devaswom Commissioner*): May I ask whether these amended Regulations have retrospective effect?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Am I to answer that question, Sir?

PRESIDENT: Yes.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Well, I am not at the question of the retrospective effect of any particular statute now. I am only considering the soundness of the argument advanced by Mr. Subba Aiyar. If it will serve the purpose of satisfying the curiosity of my friend, Mr. Raja Raja Varma, I would submit that no measure mentioned by me provides for retrospective operation except the Bill to amend the Limitation Regulation, one Section of which is furiously retrospective and curiously destructive not only of vested rights but also of decisions of Courts.

Then with respect to the report of the Marumakkatayam Committee, may I submit, Sir, for the information of the House that the Marumakkatayam Committee observe in certain passages of their report that they did not feel themselves at liberty to take the evidence of non-Nayars in connection with the enquiry, so much so that they restrain themselves in various portions of their report from giving due expression to what they thought in the absence of such evidence? Then, it was pointed out by Mr. Subba Aiyar that at the initial stages

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of the Marumakkatayam Committee's enquiry, the enquiry itself was open not only to Nayars but also to others. No doubt as I see from the history of that piece of enquiry, originally it comprised not only the Nayars but also Samantas. But it did not extend further. Therefore the members of the Marumakkatayam Committee felt considerable difficulty in expressing opinions upon various questions interallied with the questions affecting the Nayar community. All the same, basing their view upon such scanty evidence as they collected, the majority of that Committee gave expression to certain views. One of such views is with respect to the inclination of certain aristocratic sections of the Nayar community with respect to this question of inheritance. Unfortunately the Nayar community is not composed exclusively of aristocrats. There are only a very few families who may be legitimately called aristocratic. And if the pose of this microscopic minority composing the aristocratic section in the Nayar community, is to be taken as a model for legislating for the benefit of the whole community, I would submit with very considerable deference to the venerable gentlemen who constituted the Marumakkatayam Committee that one has to painfully dissent from their view. Therefore, when they gave expression to that view they had not the support of the voice of the Nayar community behind them. Also may I point out to you, Sir, as I pointed out on a prior occasion, that every person who made any proposal or took a step forward in the field of legislating for the welfare of the Nayar community had the experience of being seized with the jumpiness of nerves, anxiety and trepidation at the prospect and encounter of formidable opposition tending to thwart his attempts? A regretful experience of the community, if history shows anything, is that in the matter of attempted legislation as regards marriages in the Nayar community, opposition in season and out of season used to be raised by allied communities to nip the aspirations of my community. Probably to silence criticism as dictated by old age and experience of persons who set considerable store by what seems to them as wisdom and probably not to rouse opposition to any high pitch of heat, the majority composing the Marumakkatayam Committee recommended certain mild measures with pious hopes that at least those rudiments of social legislation might be passed into law. The advanced view in the community at that day, and even earlier, may be seen to have been of a different kind. Yet Mr. Subba Aiyar clutched at such opinions, expressed by them with considerable hesitation, when groping for the line of least resistance in his endeavour to move forward, for the purpose of thwarting the legitimate aspirations of the community at this juncture when nearly 15 years have gone by, when the advance of education, the progress of civilisation and the consequent awakening of the consciousness of self-respect of the community have their full play, and when the conditions no longer exist as they existed at the time of the appointment of the Marumakkatayam Committee. If the precedent of the Marumakkatayam Committee is attractive to my friend, he may as well attempt to quote instances

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from the days when man was trying to emerge out of barbarism into civilisation, because he would be hallowed more with the sacredness of age, tradition and hoary antiquity and would furnish a better weapon to be used against the aspirations of the Nayar community. The recommendations of the Marumakkatayam Committee are but very slender reed to lean upon in this particular connection.

The other question that has been considered by Mr. Subba Aiyar is the question of the necessity of protecting the interests of the minorities—the rights of minorities as he would put it. Sir, it is certainly the duty of all majorities to protect the rights of the minorities, but only the *rights* of the minorities. Please mark my words. If the minorities press for privileges unsupported by any reason, I would submit, merely because it emanates from any minority, let us not work ourselves into mawkish sentimentality and blind ourselves to the real situation. That is a position which does not appeal to me. The question we have to consider in the present instance is whether it is the right of the minority that is in jeopardy or whether it is the privilege of the minority that is in jeopardy. So far as the non-Nayars are concerned, I shall demonstrate to the satisfaction of this House that it is not any right of the minority that is in question, but it is only the privilege, the unedifying privilege of the minorities that comes up for consideration. Let me elucidate for instance this particular position. Let us take for example the case of a non-Nayar who is a follower of the Hindu Mitakshara system. He knows assuredly that if he marries in his own caste his property will be inherited by his son and in the absence of the son by his widow and so forth. That is perhaps too clear to him, and it does not call for any argument from any one so that he may realise that position. Such a man marrying in the Nayar community contends that his property should not descend to his wife, and that his children should not get his property though they are begotten by him on his Nayar wife. He makes an unaccountable distinction therefore with respect to the devolution of his property when he has children by his caste wife and when he has children by his Nayar wife. In the one case he clearly sees the force of his obligation and he agrees that his property should go down to his children. In the other case, he says: "Exempt me and my property from any obligation towards my children in the Nayar community." Is he urging a right or is he claiming a privilege? The fairness is very clear indeed! My friend Mr. Krishna Aiyangar whom I hold in considerable esteem has been telling us to be fair. Is this fairness? A follower of the Mitakshara law knows full well that if he has any son by a caste wife he should inherit his estate. Coming down to the Nayar wife he says 'my son by the other wife should inherit' and that my friend presses as a typical instance of fairness on his part. That is the sort of right that these minorities are pressing for, but this is a parade not of rights but of privileges. In the case of other non-Nayars who contract marriages with Nayar females as regards future marriages, what is admitted by Mr. Subba Aiyar is that clearly the right of inheritance must be conceded in their favour. That has been conceded by him as a matter of principle,

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brought about by altered circumstances or unwelcome civilisation introduced among the communities in Travancore or a number of vexatious circumstances over which Mr. Subba Aiyar had no control. Anyhow the position has been urged and the admission has been made that the children of a non-Nayar by a Nayar wife must be conceded a right of inheritance in future. Well, if the right of inheritance, therefore, is legitimately due to the children of a Nayar wife by a non-Nayar, I raise the question on what particular principle Mr. Subba Aiyar is basing the contention that that right should accrue only so soon as this Regulation is passed. Mr. Subba Aiyar's argument in that direction is this. Hitherto the non-Nayar concerned has never been giving any right of inheritance to the Nayar wife and children. Therefore Mr. Subba Aiyar says: "Let it not be given hereafter also in spite of the repeal of Regulation I of 1088." That is again a piece of argument the merits of which had better be decided by the House as a whole than be commented by me. You find that you are under an obligation and that a share of the inheritance of the father is due to the Nayar wife and children. That position as I said has been conceded by Mr. Subba Aiyar himself. Since they have been escaping obligations in the past Mr. Subba Aiyar argues to get it extended in their favour for a further time. Sir, I would just quote the instance of a person bound to pay revenue to Government. He does not pay for two years. Somehow or other with the help of the Provertikar he manages to go without payment. The third year he says: "Since for the past two years I have not been paying revenue to Government I want exemption." It is somthing like that that is being pleaded in the case of those persons who urge this particular contention. Therefore, that again I am submitting is not an argument to be listened to, on account of the rights of any minority. It comes to upholding the privileges of the minority as they are pressed before the House with a great deal of vehemence by Mr. Subba Aiyar and Mr. Krishna Aiyangar.

With respect to the question of the retrospective operation of the statute, it is said that it would disturb vested rights. This also would not stand scrutiny. First of all, what is the vested right in the matter of a man's right of inheritance? Mr. Subba Aiyar was good enough to say that he used the expression vested right not in any technical sense. So far as I know, Sir, vested right bears only a technical sense if it has any sense at all and then it is only in the technical sense that we are concerned with it when we say that no vested right should be disturbed in the enactment of a particular legislative measure. "Vested right" in its non-technical sense, according to Mr. Subba Aiyar is being disturbed by the enactment of this measure. What is the non-technical meaning of the expression 'vested right'? I do not know what it means and its import. Unless explained by Mr. Subba Aiyar, it is impossible to understand. As for the retrospective operation of the particular measure, Mr. Subba Aiyar said on one occasion that it is in one sense not retrospective. That is what I recollect and I am of opinion that in more than one sense also it is not retrospective; or may I say, whatever be the sense

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I am prepared to contend that it is not retrospective? For the question of inheritance that this particular measure deals with is a question that is to arise in the future. Before a person dies no question of heirship of that person comes in. Therefore what does it matter? In the case, of course, of persons who are dead and gone before the enactment of this measure, nobody on the other side or on this side of the House is going to contend that the measure would be applicable in their case. But in the case of persons yet to die—and I am sure it is not a contingency but it is a real certainty that people would die—(*Laughter.*) to say that if the measure applies it will be a case of retrospective operation of a statute is simply confounding things to an admirable degree. So this cry with respect to the retro-active operation of a statute does not hold good in the present instance. So far as the positions that have been advanced as supporting the motion of Mr. Subba Aiyar are concerned, they are thus easily met.

Then, I referred to the general tendency of legislation elsewhere in advanced colonies in France, in Scotland and other places, to show that the interest of the State in the welfare of children and in the case of married women is so keen that even by Legitimation Acts made purposely retrospective those States are taking into consideration the welfare of children, legitimate and illegitimate, as well as the welfare of the women concerned. With respect to those instances Mr. Subba Aiyar told us and Mr. Krishna Aiyangar hinted that all that might be kept aside since they are inconvenient to be discussed here. We have here marumakkatayam law. Why not you draw your inspiration from Payyannur Gramam and then legislate for the Nayar community? Such a question was put to us and the light afforded by the advanced countries of the world proved not to be welcome to our friends. So then such instances need not be considered any further here.

Then the only argument that remains to be examined in this connection is as to what you have done in the year 1088 when you enacted Regulation I of 1088. Why did you then exclude the right of inheritance from the non-Nayar? That is the argument that has been finally brought out in all seriousness. With respect to that argument Sir, my answer is this. First of all, let me observe that the distinction which manifestly exists between the existing marriages and the future marriages is a matter which we cannot afford to lose sight of. In 1088, no doubt the legislature declared that *Sambandham* which prevailed among the Nayar community was elevated to the position of marriage for legal purposes; but *Sambandham* did not meet with legal recognition for all the incidents of a legal marriage. Now, what is the sort of marriage that has been contemplated under the Nayar Regulation is the question that we have to consider. With your permission Sir, I would submit to the consideration of the House a very well-known definition of the expression 'marriage' from a decided case.

"Marriage is the union of one man and one woman so long as they both shall love to the exclusion of all others by an obligation which during that time the parties cannot of their own volition and act dissolve, but which can be dissolved only by the authority of the State."

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[Mr. P. K. Narayana Pillai.]

Just in the light of that definition, in spite of the declaration in the statute that there is marriage when a *Sambandham* is performed, let us see whether there is really a marriage. First of all, in so far as the marital tie between the husband and the wife is concerned, it is laid down in Regulation I of 1088 that such tie may be terminated at the will and even at the caprice of the parties. Absolutely no reason need be shown and nothing need be done in the matter of getting a severance of the marriage tie.

Then with respect to the other criterion, that is to say, to the exclusion of all others, polygamy was rampant in the community. The obligations were of a very slender kind. In the marital relation of non-Nayars with Nayar females nothing like inheritance was conceded. So just in the light of the ordinary conception of marriage, the marriage that has been recognised in the Nayar Regulation elevating Sambandham to the dignity of marriage is, really speaking, no marriage at all. I would draw also the attention of the House to a case reported in the Madras Series, *Koraga* vs. *The Queen*, where Turner, C. J. and Muthuswami Aiyar, J. observed as follows:—

"The customary co-habitation of the sexes under Aliyasantanam Law appears to us to do no more than create a casual relation which a woman may terminate at her pleasure, subject perhaps to some conventional restraint, among the more respectable classes, such as a money payment and the control of relations."

On that ground, in the particular case cited, their Lordships of the Madras High Court stated that, so far as the followers of the Aliyasantanam Law were concerned—and it is not far different from the Marumakkatayam system there is nothing like marriage in that community, except a casual relation controlled by money payment and the control of near relatives not amounting to anything like a union which may be described as marriage. In spite of the fact that the Nayar Regulation declares *Sambandham* as a marriage, in view of its terminability, in view of the fact that on a money payment at the most the parties may get themselves separated, in view also of the absence of any inheritance—in view of all these facts, I am submitting that the *Sambandham* contemplated under the Nayar Regulation is strictly speaking not a valid marriage. That being the case, those persons who have entered into marital relations with Nayar females under Regulation I of 1088 cannot be said to have contracted anything like a valid marriage. In the present instance, on the other hand, we are introducing a measure the effect of which will be to introduce a real and substantial marriage tie in the Nayar community. Again what I am bringing to the notice of this House is this. The members constituting the Marumakkatayam Committee, consciously or unconsciously, when they made the statement that nothing like inheritance need be demanded from the non-Nayars who came within the purview of their report, provided certain sluices and valves in their report which would not work any hardship to any party concerned. For example, in the case of the marital relation that they reported about, they took care to see that whensoever a Nayar female found that her heterogeneous husband was not prepared

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to support her or her children, she had the liberty to get rid of him, to terminate the marriage contract and ask the gentleman to go about his business. That was a safety valve. Now, I ask, in the light of the measures that we have been passing from day to day, on the previons occasion when the Bill came up for consideration before this House, whether we adverted to the same conditions. We did not. Mr. Govinda Menon shouted at the top of his voice and it was carried by a majority of this House that the divorce of Nayar females should be made practically impossible except on very specific grounds. The House accepted it. I am appealing to the sense of the House keeping that in view. There is a substantial marriage of a more or less fixed variety from which the woman now cannot have any escape. All the same our non-Nayar friends are now arguing that, so far as the husband is concerned, in spite of the fact that this new Regulation is going to be brought into existence, they should be allowed to continue in the old strain. As regards giving any share in the inheritance, they would do as of old. So far as the wife is concerned, she finds the tie rather tight about her. She cannot give up the husband now and break off the contract. So then, the situation that has been brought about by the amendment to the divorce Section is this. Real hardship arising from the absence of freedom of the woman has been brought about. She cannot better her prospect. The husband can continue in the old fashion and starve her and leave absolutely nothing to her, because he is allowed a position of vantage. That is the idea of our friends. The husband is very particular in seeing that the doors are pretty well closed against the wife, to get out of the grip of such a husband.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): May I know from Mr. P. K. Narayana Pillai whether the non-Nayar husband has not got the right to practise polygamy also?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Yes. I am thankful to my young friend Mr. G. Paramesvaran Pillai that there is that risk also. (*Laughter.*) So I am submitting—

PRESIDENT: After the Regulation is passed?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Even after the Regulation is passed. With respect to the existing marriages Mr. Subba Aiyar was certainly growing quite uneasy and wanted exemption, so that the non-Nayars may have the luxury of having a multiplicity of wives.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): In their caste.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Certainly. Therefore I am just submitting, Sir, that what are dealt with by my friends Mr. Krishna Aiyangar and Mr. Subba Aiyar as rights are only privileges. I am sorry, they do not perceive the entirely different nature of the marriages provided for by Regulation I of 1088 and by the present piece of legislation. In the one case it is only a dignified form of concubinage. That is what is contemplated by Regulation I of 1088.

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[Mr. T. Lakshmana Pillai.]

In this particular measure it is marriage on a parallel with marriages recognised in the western world. This may prove as an acceptable form of marriage even in western countries. Even Hindu Law marriages would not be acceptable in western countries because they are polygamous. But so far as the Nayar system of marriage is concerned, it is monogamous and it will be recognised even in the most civilised countries of the world. We have the tip-top kind of marriage according to the present Bill. Therefore, to say that the husband under the existing Regulation I of 1088 and the husband under the incoming Regulation are on a par, is misleading and far from being true. Marriage, according to Regulation I of 1088, has been fundamentally modified by the legislature and this measure has made the old marriage real marriage in the true sense of the term. Therefore, if a non-Nayar continues to be the husband of a Nayar female after the passing of this Regulation he may be taken to have contracted a new marriage for all practical purposes, like one who contracts a fresh marriage. In the case of the latter, he has to present a cloth on the occasion of his marriage. In the case of the former, the only difference would be that he can dispense with the presentation of the cloth. Therefore, I am submitting that when any person is continuing his marital relations with a Nayar female after the passing of this Regulation, he is really contracting a new marriage, because the original marriages have, as I submitted, been considerably modified, except with this one difference, *viz.*, that one need not present a cloth to one's wife. If he wants to continue the existing marriage, he must necessarily be prepared to place himself in conformity with the provisions of this measure. In the light of that fact, if, in the case of a new husband, who marries after the passing of this Regulation, he could be bound by the provisions of this Regulation, why, I ask, the gentleman who wants to continue the existing marriage after the passing of this Regulation, should not be bound by the provisions of the present measure, simply because he is not compelled to present the cloth once again after the passing of this Regulation, especially when we consider the fact that he has had the advantage of the marriage till now on very cheap terms. Therefore, I am submitting that this cry with respect to the existing marriage being affected and vested rights being disturbed has absolutely no basis. If, as a matter of fact, this measure provides for the continuance of the old system of marriage, then I can understand the ground for this agitation. Such marriage has been put an end to by the present measure. Its death-knell has been sounded. That a man, simply because he has been allowed to contract a marriage with a Nayar female before the passing of this Regulation on certain terms, should be allowed to continue the marriage on the same terms, I think, is a proposition which we cannot subscribe to in view of the terminability of such a marriage.

MR. T. LAKSHMANA PILLAI (*Nominated*): If the husband does not wish to continue the marriage under the new conditions

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imposed by the present Bill, is he at liberty to divorce the wife otherwise than under the conditions prescribed by the present measure?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I have only faintly gathered what my friend means by his question.

MR. T. LAKSHMANA PILLAI (*Nominated*): I ask, what is the remedy for a man who does not wish to continue his marital relationship with a Nayar female after the passing of this Regulation? Could he divorce his wife for the simple reason that he is not prepared to continue the existing marriage? Is he not bound by the provision in this Bill relating to divorce?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Is that all? I am prepared to answer him. As I submitted already, because we are going to have an entirely new kind of marriage after the passing of this Regulation, it would not be a correct contention to say that the present statutory measure should not apply to existing marriages if they continue after the passing of this Regulation.

As for Mr. Lakshmana Pillai's question—the same was hinted by Mr. Krishna Aiyangar also—I say it is a very legitimate question and I admit that there is some force in that observation. In the year 1088 and before that time so many persons entered into marital relations with Nayar females. Naturally they thought that such terms as that Regulation prescribed would alone bind them. They may now find that after all the situation has changed. The men may not be prepared to be tied down by the provisions of the present measure. Such husbands should certainly be at liberty to refuse to continue such marriages. I submit, they may be given an opportunity to do so. A time-limit of about six months after the date on which this Bill becomes law may be prescribed in a subsequent Section of the Bill, within which period such of the non-Nayar husbands as would like to effect a divorce from their Nayar wives may be empowered to do so. Then again, my friend the mover of the Bill himself, probably not to provoke opposition, has provided Section 45 towards the close of the Bill. As to the question whether the non-Nayar husband is really going to get out of his marital alliance with the Nayar female, my own view is that he will not, for this plain reason. These non-Nayars who have got marital relations with Nayar females fall into two categories, *viz.*, persons obliged to marry from the Nayar community because they cannot marry elsewhere, and persons who, on account of considerations of convenience or other considerations, take it into their heads to marry Nayar wives. In the case of the former, as stated already, they have to marry Nayar wives because they cannot marry elsewhere. As for the latter, who are invariably followers of the *Mitakshara Law*, they are under greater difficulties than even the former; for usually when they enter into marital alliance with Nayar females they do so when they are advanced in age, say when they are 55 or 60 and when it would not be convenient for them to marry caste wives. Therefore, with respect to the question of the chance for divorce for non-Nayar husbands who do not wish to

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continue existing marriages—the question raised by Mr. Lakshmana Pillai—it is not so easy or probable. If they are asked to divorce their Nayar wives, what will they do afterwards? They will have to marry another Nayar girl eventually. And then the husband will be bound by the present Bill.

MR. T. LAKSHMANA PILLAI (*Nominated*): They can marry in their own castes.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): There are a set of people who are out of necessity forced to marry Nayar females. If they divorce their present wives they will have to marry other Nayar girls. That will be walking into the clutches of this Regulation. I do not see why he should perform such a feat except when rendered restless by the attraction of novelty. Therefore, in view of all these circumstances, I do not care for the chances of such cases. This contemplated difficulty that has been raised as a danger signal is mere threat and sentimental twaddle not supported by any reason. What I submit is that, on the whole, no difficulty has been created. Further, the necessary safeguards have already been provided. On a prior occasion, I pointed out that so far as the belongings of a person are concerned, he is at perfect liberty to use them till his death. With respect to their course after his death, he has been given testamentary power to such an extent that he is at liberty to dispose of them as he wants.

Then, the question of status was raised. A co-opted friend of mine, I recollect, said that the marital alliance with non-Nayar males was instrumental in raising the status of Nayar women. I would have been glad if that really conferred that benefit. But, if, in the elevation of status, she is not given the right to inherit any portion of the property of her husband, such status I would never consider as status in any way enviable. It is the right of inheritance that gives the wife a status equal to that of the husband. Sir, mixed marriages, certainly, are not peculiar to Travancore. It may be, perhaps, that we are for the first time seriously raising before this Council the question of mixed marriages. We have had such cases elsewhere recently. For example, at such short distance as Ceylon, mixed marriages were legalised by one of the Ceylon Ordinances which states that the wife should be regarded as elevated in status to that of the husband. My friend Mr. M. Raja Raja Varma mentioned when he was moving his amendment that some share of the inheritance might be given in favour of the wife in lieu of what should be given to her for maintenance. To that extent he was fair. My friend Mr. Subba Aiyar is not prepared to go even to that extent.

MR. M. RAJA RAJA VARMA (*Devaswom Commissioner*): I did not say that a share should be given to the wife. I only said that she should have the right to maintenance out of the property of the deceased. I never agreed to a share being given to her.

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MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I thought that he was proposing to give her a share instead of what she would have to be given by way of maintenance. Whether it is a share in the property or right to maintenance, it is all the same. Somehow, he agreed to give her something. To that extent at least he was fair. At the same time, I want it to be distinctly understood that I do not ignore the existence of a number of non-Nayars, men of virtuous character who are deeply interested in the welfare of their Nayar wife and children. There is no gainsaying that. I do not in the least doubt the existence of such non-Nayars in Travancore. But, unfortunately, there are those of the opposite variety also. For example, even in Trivandrum we have heard instances of marriages contracted from month to month by foreigners on payment of some stipulated amount. Such instances are not very rare. The law is intended not exclusively for the good and the virtuous, but for the wicked, the unclean and the undesirable as well. I do not at all wish to cast any reflection on respectable non-Nayar gentlemen who have married Nayar wives.

Then Mr. Subba Aiyar's argument proceeded as follows. He asked us, practically: "In the year 1088 you never disclosed to us the fact that you were going to raise so many complications in our marital relations with Nayar women. If you had told us, many of us would have gone without marriage and not allowed ourselves to be married to Nayar females. Is it not very strange now that you should propose your own terms?" I am only drawing his attention to the fact that out of the many non-Nayars who have contracted marriages with Nayar females the major portion is found to consist of persons who have to marry Nayar girls because they cannot marry elsewhere.

It is in justice to the unprotected that I am bringing this matter to the notice of the Council. I may further point out that this Council is responsible for landing the Nayar community in this peculiar position in which women who cannot get any support from their husbands are deprived of the option of separation from them. That particular position has been brought about by the Council voting upon the divorce Section, monogamy Section and other allied Sections of the Bill. It is these that have paved the way to that position.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): How can the husband get out of it?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Why, now the husband can get out of it. But why should he get out if no objection attaches to him? He can cut off the inheritance claimble by the wife. He will be under one Regulation and the wife will be under another Regulation if Mr. Subba Aiyar's amendment is to be carried. It is very difficult to get divorce. The abandonment of a husband cannot be brought about except through the sluices provided by Mr. A. Govinda Menon in the shape of incompatability, habitual cruelty, insanity, impotency, etc. So, I am submitting absolute iniquity has been created in

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[Mr. P. K. Narayana Pillai].

favour of the husband but against the wife. The husband and the wife are not in the same plane. The wife's position has been rendered worse and the husband's position better. That will be the position if we accept the amendment of Mr. Subba Aiyar who professes the greatest concern for the minorities who marry from the Nayar community and maintains that the demand of the Nayar community is unjust. But, according to him, a change in the law of inheritance will even lead to economic depression in these minority communities. That is the sort of concern which my friend evinces towards other communities except the Nayar community. (*Hear, hear.*) Such one-sided mania and idealism I have not seen in my esteemed friend except on this occasion.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I am glad that you recognise that.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): It does not rest upon any solid reason except on phantoms and sentiments of a nebulous kind which need not be analysed and separated though it has been spread out with some skill by my friend Mr. Subba Aiyar. With these observations, I strongly oppose the amendment.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Before Mr. Narayana Pillai resumes his seat, may I ask in cases where a provision has been already made, what would be the position?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I know that Mr. Krishna Aiyangar has made a decent provision.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I do not want any personal instances.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): With reference to the case of non-Nayar husbands—

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): My question is whether any non-Nayar husbands have already made provision for their wives and children and what the law says in such cases.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): With respect to this question so many courses are open to the husband.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): If they do not want to exercise the testamentary power—

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): They can execute deeds of settlement by which they can settle the property. Or they can execute deeds of trust, directing the course their property is to take. In view of these methods available to carry out their right, there does not seem to be any further difficulty. They are at liberty to reserve the interest in the donor himself under appropriate conditions.

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RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*)(*Deputy President*) : In cases where provision has been made, what is the protection the legislature offers ?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : As to that I cannot advise that property once gifted may be thrown into hotch-potch again. No lawyer can advise a recovery of property once gifted away.

MR. A. HOOGEWERF (*Nominated*) : Sir, Mr. Krishna Aiyangar's analogy with regard to law and practice in other communities, I am sorry to say, is not quite applicable here. Bad cases should not be brought forward as examples for justifying other bad cases. We are legislating here to do away with bad practice and bad law.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*)(*Deputy President*) : We cannot hear even a word.

PRESIDENT : Nobody is responsible for it. I think the only course is—

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*)(*Deputy President*) : We cannot hear you though you are in the midst of all. It is better that we adjourn now.

PRESIDENT : The rain is so insistent. If the House has no objection, we may adjourn now.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : As my friend asks, why not we adjourn ?

PRESIDENT : We may adjourn now.

The Council adjourned at 4-12 P. M. to meet again the next day.

S. PARAMESVARA AIYAR,
Secretary to the Legislative Council.

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